## United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 74-162

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee, : Docket No. 74-1624

- against -

ELIZABETH CAROLYN DUNLAP,

Defendant-Appellant.

Appeal for the United States District Court for the Southern District of New York

### APPENDIX



PAGINATION AS IN ORIGINAL COPY

## TABLE OF CONTENTS

			At Page
ı.	Exc	erpts From Trial Transcript	. 1
	A.	Direct Examination of Kenneth Bernhardt	. 1
	в.	Cross-Examination of Mr. Bernhardt	. 49
	c.	Redirect Examination of Mr. Bernhardt	. 67
	D.	Recross Examination of Mr. Bernhardt	. 76
	E.	Redirect Examination of Mr. Bernhardt	. 83
	F.	Direct Examination of Dorothy Richardson	. 84
	G.	Cross-Examination of Dorothy Richardson	100
	н.	Direct Examination of Henry Lee Regan	103
	ı.	Cross-Examination of Henry Lee Regan	. 117
	J.	Oral Argument on Defendant Dunlap's Motion for Judgment of Acquittal	154
	к.	Renewal of Motion for Judgment of Acquittal	
II.	tele Ber	ernment's Exhibit 3-A in Evidence anscript of tape recording of ephone conversation between hhardt and Regan, January 23, 1973 6:45 p.m.)	168
III.	(Te:	ernment's Exhibit 3-B in Evidence lephone conversation between hhardt and Regan on January 23, 1973 9:45 p.m.)	169

A+	Page
AC	rage

IV.	Government's Exhibit 3-C in Evidence				
	(Telephone conversation between				
	Bernhardt and Richardson on January				
	23, 1973 at 10:10 p.m.)	170			

2

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

### AFTERNOON SESSION

2:00 p.m.

(In open court; jury present.)

THE COURT: Mr. Buchwald?

MR. BUCHWALD: Your Honor, the government calls as its first witness Mr. Kenneth Bernhardt.

KENNETH BERNHARDT, called as a witness by the Government, being first duly sworn, testified as follows:

### DIRECT EXAMINATION

### BY MR. BUCHWALD:

- Q Mr. Bernhardt, by whom are you employed, sir?
- A The New York City Police Department.
- Q And in what capacity?
- A I am a detective.
- Q How long have you been so employed?
- A Approximately four years.
- Q And where are you presently assigned, sir?
- A I am assigned to the New York Joint Task Force, which investigates harcotics violations.
- Q And how long have you been assigned to the New York Joint Task Force?
  - A About 3-1/2 years.

25

24

. 3

4

5

7

8 9

10

11 12

13

14

15 16

17

18

19 20

21

22

23

24

25

Now, directing your attention, Mr. Bernhardt, to the evening of January 25, 1973, what was your duty assignment on that evening?

I was working in an undercover capacity on case No. CTE-72-0237.

And when you say an undercover capacity, what are your functions in an undercover capacity?

I was posing as a purchaser of narcotics.

Q Now, on that occasion, on the evening of January 23, 1973, what did you do in your capacity as an undercover agent?

I had placed several telephone calls during the course of the evening to a Henry Lee Regan.

Was this an individual whom you had known?

A Yes, it was.

And did you use your own name in your conversations with him?

No. I was using the name Curley and I telephoned him relative to the purchase of some cocaine.

How many telephone conversations were there on Q that evening between you and Henry Lee Regan?

There were three.

Do you recall approximately what time the first telephone conversation was?

1	jqbr	Bernhardt-direct	3
2	A		
3	. ο	And on that occasion do you know the	telephone
4	number	that you called?	
5	A	I do. But not offhand.	-
6	Q	Do you know where Mr. Regan was that you	were
7	calling	g?	
8	A	Yes. 38 Marcy Place, in the Bronx.	
9	Q	Was that his apartment?	
10	A	Yes, it was.	
11	Q	During the course of your first telephor	ne conver-
12	sation	with Mr. Regan and on that evening, what di	d you
13	say to	him and what did he say to you?	
14	A	I called him to find out whether he knew	anyone
15	that I	could purchase some cocaine from. He said	that he
16	did but	that he would have to check with this pers	on and
17	that ba	sically I was to call him back later that e	vening.
18	But dur	ring the course of the conversation there wa	s
19	the doc	orbell did ring and	
20	Q	Could you hear the doorbell ring while y	ou were

Q Could you hear the doorbell ring while you were on the phone?

21

23

24

25

A Yes. He said hold on, that someone was at the door or the doorbell rang.

THE COURT: But the question was, could you through the receiver hear the ring of the doorbell?

5

6

7

. 8

10

11

12

13

14

15

16

17

18

19

20

21

22

\_ 23

24

25

would get a little closer to the core of the argument, and that is this:

Were this a conspiracy case, there is no question at all that if these people were conspirators these would be offered as statements made in the course of a conspiracy and as such of course would be admissible.

MR. OZER: No question about that, Judge.

THE COURT: None. We are not trying anything that is labelled conspiracy. We are trying something that is labelled a substantive count, but we are alleging there were various aiders and abetters, and it would be the government's point of view, I would presume, and I will hear the government very shortly, that these aiders and abbeters are agents, and under an agency doctrine what happened is admissible and binding against these defendants.

.Am I substantially correct?

MR.BUCHWALD: Yes, your Honor. That is precisely our opinion and the opinion reflected in the memorandum of law submitted.

THE COURT: So it does not help much to say that you understand the hearsay rule is still in effect because we all agree that it is, and that unless there is some reasonable exception that it must be excluded, with

which we all agree. But talk about this case.

Indeed, what is the difference? And I invite your comment. I notice that Mr. Genovese has not objected to this and indicated he would not object to the tape, which is basically the same thing that we are talking about here.

What basically is the difference between that which is admissible under the conspiracy law, statements made in furtherance of a conspiracy, and that which is admissible under the aider and abetter rule on the theory of agency.

In both cases, you see, Mr. Ozer, what makes the statement of one in a conspiracy case the statement of all is that every member of the conspiracy is the agent for every other member. That's what one charges the jury every time one charges in a conpsiracy case.

Correct?

MR.OZER: I agree with that, your Honor.

THE COURT: Okay. Now, what is the difference between that and an alder and abetter case, where the theory is precisely the same, namely that the aiders and abetters were the agents of each other for the advancement of the common criminal cause?

I will hear you.

.

MR. OZER: In the first place, I don't think

I have to get that far. It is the defense's contention that

at the time of this transaction that Mr. Regan was oper
ating for the government and was not an independent agent

or was not an independent party, and consequently could not

be an aider and abetter in this case. That is one of the

defense's contentions, your Honor.

If the Court assumes that he was an aider and abetter, then in effect is is overruling the defense's contention. I say therefore they must have an independent basis for allowing that evidence to come in.

And as Mr. Regan is here in the building,

I understand, and will testify, I can see no harm to the

government to deny this type of evidence.

THE COURT: Yes, Mr. Buchwald? What do you have to say?

MR. BUCHWALD: With respect to the response that
Mr. Regan was a government agent within the meaning of
an informant, the government would simply respond that
there will be substantial quantities of evidence establishing
to the contrary, that Mr. Regan did not know the
identities of the undercover agents or the fact that
they were undercover agents, that he was at that time
in fact the suspect under investigation.

THE COURT: I might tell both sides that I have read the transcripts during the luncheon recess.

MR. BUCHWALD: And to the extent, of course,

I suppose, that the defense presently maintains to the contrary, I would urge the Court to accept the evidence subject to connection, placing an obligation upon us to adduce some evidence during the course of the trial that

Mr. Regan was not a government agent.

THE COURT: What you are saying to me in substance is, Mr. Buchwald, that Mr. Ozer is mistaken when he characterizes Regan as a government pawn.

MR. BUCHWALD: That is correct, your Honor.

THE COURT: And the evidence will so show.

And if he wasn't at the time, he was an aider and abetter,

as indeed I believe he is named in the fourth count as hav
ing been, is he not?

MR. BUCHWALD: That is correct, your Honor.

THE COURT: And you are offering this testimony as to conversations in the absence of the named defendants under an agency aider and abetter theory, isn't that correct?

MR. BUCHWALD: That is correct, your Honor.

We are offering it. We believe that the conversations or

tapes will tend to establish that already at this point

Mr. Andino had already been contacted by, the government

will contend, Miss Dunlop. It is not the government's

3 4 5

1

6

7

8

9

11

12

13

15

16

17

18

19

21

20

22

23

24

25

contention that at this point Mr. Andino had been in touch with Mr. Regan. But we believe that the joint enterprise was clearly already in existence at the time of these conversations.

THE COURT: Who were the members at the time of

this conversation, according to the government's theory?

MR. BUCHWALD: According to the government's theory, all three were members, though the government would suggest that the evidence would indicate that Mr. Regan and Mr. Andino did not know each other at this point, though they both knew Miss Dunlop.

THE COURT: It wouldn't be necessary that they know each other if they were engaged in a common enterprise.

MR. BUCHWALD: That is correct.

THE COURT: Your objection is overruled.

MR.GENOVESE: I just want to clarify the record on one point. Your Honor did say that Mr. Regan is named as an aider and abetter.

THE COURT: No. He is named as a defendat, actually.

MR. GENOVESE: Right. Yes, sir. He was named

1

2

3

5

6

7

8

9

10

11

12

13

14

15

jgbr

as a defendant.

the indictment.

18

19

20

21

22

23

24 25

THE COURT: Mr. Gutman, when there is a recess, I shall tell you there is a recess. Unless I tell you that, please remain with the other members of the jury.

Go ahead.

BY MR. BUCHWALD:

Mr. Bernhardt, returning to your first telephone conversation with Henry Lee Regan on the evening of

January 23, 1973, will you state to the Court and jury on that occasion what you said to him and what he said to you?

A He had mentioned to me that he had -- I had asked him whether he had any good news for me, and he said no, but he had something else set up later that night, possibly for around 10 o'clock.

And I told him, you know, all right; he continued talking and began to tell me that this move would have to be made a little different than the previous moves because we were going to have to go out to a place. He mentioned that it would be somewhere in the downtown Delancey Street area. It would be somewhere in the downtown Delancey Street area.

He mentioned that, I think he mentioned the name Carol, stating that he didn't know the fellow and that someone else was going to introduce him to the fellow.

- Q And did he say who that someone else was?
- A Yes. He mentioned the name Carol.
- Q Did he say who Carol was?
- A He mentioned that she lived downstairs, underneath him, I think.
  - Q During the course of that telephone conversation,

3

5

6

7

1

8 9

10

11

12

13 14

15

16

17

18

19

20

21

22

23

25

could you hear him speaking with someone else?

Every now and then, yes, he would turn and speak with someone else. And upon one occasion he asked the other person whether it was the manager of the bar, and they told him I think it was the owner of the bar.

Did he mention the name of anyone he might be meeting later that night?

He did mention the name Carol and I think he might have mentioned the name Andy. I am not sure.

What is that other name?

I think he might have mentioned the name Andy. I am not sure. During one of the conversations the name did come out.

Mr. Bernhardt, did you at that time make any arrangements with Mr. Regan to speak with him again?

I told him that I would call him back at approximately 9:30, around 10 o'clock, in that area there, because he said he had everything set up for, or everything was set up for around 10 o'clock.

So I told him I would call him about 9:30 or so, which he agreed upon, and about 9:45, I think it was somewhere in that area, I called him again.

And did you get through to him?

I tried between 9:30 and 9:45 and I finally got a

hold of him around 9:45.

5

7

10

9

11

. 12 13

14

15

16

17

18

19 20

21

22

23

24

25

And on this occasion you called him at the same Q number?

Called him at the same telephone number.

And on this occasion what did you say to him and Q what did he say to you?

A He informed me that everything was set up and that -- he referred to a she would go down there with us and what not. I told him that I would have to see whether I could get transportation because he wanted me to come up to the Bronx to pick him up, and I told him I would give him a ring back to see whether I could get a car. I told him, when I called him back again a little after 10, that I couldn't get a car and that if he would take a taxicab down there that I would pay for the taxicab.

Q And at this time did he tell you the address of the place that you would be going to?

Right. He told me it was 177 Chrystie Street and A it was on the corner of Chrystie and Rivington.

Did he say where he had gotten the address from?

Yes. He referred to she again, said he had gotten the address from her.

Did he say anything else about this she or her? Q

That she would do -- she would introduce us to the

owner of the bar.

1

3

4

6

7

9

10

11

12 13

14

15

16

17

18

19

20

21

22

24

25

Q Do you recall how many phone conversations there were all together that evening between you and Mr. Regan?

A Well, there were three that I know that -- there might have been some before 6:45, but I believe there were just three.

Q Was there a third conversation after the conversations that you testified to?

A Yes. It was the third conversation in which I told him to take a cab down and I would pay for the cab.

- Q You told him that in the third conversation.
- A Yes.
- Q Now, where were you calling from, Mr. Bernhardt?
- A I was calling from our office, the Joint Task
  Force office, in Manhattan.
  - Q Did you record these conversations?
  - A Yes, they were.
- Q Now, during the course of the first telephone conversation to which you have testified did Mr. Regan tell you whether or not he, himself, knew the person?

A No, he said he didn't, that we would be introduced by someone else, and he referred to a she, she would introduce us to him and it would have to be done a little different because he was used to people coming to his house.

23

A

Chrystie and Rivington.

Q That is in Manhattan?

177 Chrystie Street. It was on the corner of

1

2

Q · Did you go into the bar?

Λ Yes, we did.

5

You and Detective Richardson?

A Detective Richardson and myself, right.

7

Do you know where Detective Richardson is assigned?

Yes. She is assigned to my office. She works

9

also for the New York Joint Task Force.

10

What, if anything, happened when you and De-

11

tective Richardson entered the bar?

12

A

Well, when we entered the bar, we observed several patrons, and I looked for Mr. Regan, but I didn't see him.

13 14

I then proceeded up to the bar with Detective Richardson

15

and we sat at the bar. Shortly after we got there, Mr.

16

Regan and a female entered the bar.

17

Let me stop you there for one second.

18

When you entered the bar, approximately how many patrons were in the bar, if you recall?

19

20 .

I would say, including the barmaid, maybe about

21

five or six, in that area.

22

And then at some point after you and Detective Richardson entered, Mr. Regan entered with another individual?

23 24

Yes. He entered with a female, yes.

25

5

7

8

10

11

12 13

14

15

16

17

18

19

20 21

22

23

24

25

Q And do you see that other individual in the courtroom today?

- Yes, I do. A
- Q Would you point to that other individual, please.
- A The lady with the gaylay and the pink.

THE COURT: The headdress is what you are referring to. All right.

MR BUCHWALD: May the record reflect that the witness has identified the defendant Elizabeth Carol Dunlop? THE COURT: Yes.

What happened when Mr. Regan and Miss Dunlop entered the bar?

They joined us and introductions were exchanged. A Mr. Regan introduced the female as Carol and I introduced Detective Richardson as Mickey.

- 0 What was that name again?
- Mickey. A
- And then what happened?

I had ordered some drinks, I think wine or something, what everybody wanted, and we exchanged general greetings. We were then told -- Carol had asked the barmaid whether Andy was there, and the barmaid said no.

- Then what happened?
- We waited, and some time later a gentleman walked

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

in, went into the back, took off his coat, and came back out.

- Q And by the back, are you referring to another room in the bar?
  - A Yes, a room near the end of the bar, a rear room.
- Q And do you see this gentleman in the courtroom today?
  - A Yes, I do.
  - Q And would you point to him, please.
  - A The gentleman in the brown suitwith the glasses.

MR. BUCHWALD: And may the record reflect that the witness has identified the defendant Angel Andino?

THE COURT: Yes.

- Q Backtracking just a moment, Detective Bernhardt, could you hear Miss Dunlop speak with the barmaid?
  - A Yes.
  - Q And what were her words at that time?
  - A She had asked whether Andy was there.
- Q Now, after you first saw the defendant Mr. Andino, what, if anything, happened at that point?
- A I would say he went into the rear room, came back without his coat, stopped and talked to a few people at the other end of the bar, and then he approached the group which I was in With Detective Richardson, myself, Regan and

jgbr

Miss Dunlop.

4

5

6

8

9

10

11 12

13

14

15

16

17

18

19

20

21

23

24

25

Mr. Regan and Miss Dunlop then left the group and stepped away from us and were talking with Andy toward

- Q Could you see them talking?
- A Yes.

the other end of the bar.

- Q Could you hear what they said?
- A No.
- Q And what happened then?
- A Then Mr. Regan came back over to me and informed me that Andy could not get the whole eighth, which would be four ounces, a little over four ounces, but --
  - Q An eighth of what?
  - A An eighth of a kilogram of cocaine.
- Q Let me ask you this, Mr. Bernhardt. At this time did Miss Dunlop, Mr. Regan and Mr. Andino all stay in the bar?
- A They entered a rear room and then they came back.

  They separated from the group and went to the other end

  of the bar.
  - Q And then Mr. Regan came back to you?
  - A Mr. Regan came back over to me.
- Q When he came back to you, was Miss Dunlop and Mr. Andino -- were they with him?

- Is that a question of how pure the cocaine is?
- Yes. You can judge the relative purity by that.
- And you asked Regan this question?
- A I asked Regan this question.
- And what did he say?
- He told me 1-1/2.

24

23

1

3

5

6

7 8

9

10

11 12

13

14 15

16

17

18

19

20

21

22

23

24

25

And then what happened? Q

I then told him his price was too high and I wanted to know when Andy could get the entire eighth. He again joined Andy and Mrs. -- Carol again.

This is Regan joined them? Q

Regan, right. In other words, he is running back and forth between myself and Detective Richardson and Carol and Andy.

And what happened on this occasion after Regan Q joined Miss Dunlop and Mr. Andino?

They had a conversation and he returned to me and told me that I would be able to get the entire eighth tomorrow night. I then asked him what the cut would be on that. Again he went back over to Carol and Andy and he had a conversation and then I decided to join them rather than have him running back and forth.

So now where did you go now? Q

I then joined them towards the other end of the bar.

And so who was together now with you? Q

It was myself, Andy, Carol and Regan. A

Where was Detective Richardson at this time, if Q you know?

Still back up the other end of the bar, sitting

6

7

8

.9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

down.

- Q Had you told Regan who Detective Richardson was?
- No. I didn't tell him she was a detective. A
- Did you tell him anything about her? Q
- She is my girlfriend, something like that.
- And after you joined Mr. Andino, Miss Dunlop and Q Mr. Regan, what, if anything, happened then?

I introduced myself to Andy and I told him that I originally wanted the 4 ounces or the eighth but he couldn't do it tonight and I wanted to be able to do the entire 4 ounces. He told me tomorrow night, which would be the next night. I then asked him what cut it could take. He told me it could take a 2 cut. I asked him how much it would be. He told me about 25 or \$2600.

And during this time where was Miss Dunlop?

She was in the general -- you know, the four of us were standing around like a circle, like.

THE COURT: Excuse me for interrupting, but when you say it would take a 2 cut, what does that mean?

THE WITNESS: In otherwords, if I had one ounce of cocaine, I could cut it twice, I could add two ounces of dilutant to it.

THE COURT: So when you said that this 4 ounces that he was supposed to bring the next evening would take a 2 cut,

. 1

3

4

5

7

8

9

11

10

12

13

15

16

17

18

19

20 21

22

23

24

25

was the substance of that to indicate to you that it was of sufficient purity so that you could add twice the quantity of dilutants to that?

A THE WITNESS: Yes, it was.

THE COURT: Go ahead.

### BY MR. BUCHWALD:

Q On these previous occasions when Mr. Regan had come over to you alone, where were the defendants at those times?

A They were approximately maybe 10 or 15 feet towards the other end of the bar.

- Q Were they together?
- A Yes. They were standing close together, yes.
- Q And when Regan left you, where did he go?
- A He went to where Carol and Andy were standing.
- Q And at this time the three of them were together.
- A Right.

Q Now, after the discussion which you have testified to between yourself and Mr. Andino, when the four of you were together away from Detective Richardson, what, if anything, happened?

A Well, during the conversation he also told me that he would be in the bar tomorrow night after 10 o'clock.

Q That is the same bar?

Q

And what, if anything, did you do then?

1

3

A

Regan and Carol then joined us -- .

What about Andino at this point?

6

Q

I think.

7

He stayed down towards the other end of the bar,

8

9

10

11

12

13

14

15

16

17

18

19

20

21 22

23

24

25

Then what happened?

We finished our drinks and I think we left the bar, Detective Richardson and myself.

When you left the bar, do you recall whether or not Miss Dunlop and Mr. Regan were still in the bar?

No. I think they left the bar before us, as I remember giving Mr. Regan cab fare down. I asked him how much the cab fare was, and he said \$7.23. And I gave him \$15 to cover the round trip.

- Q You gave Regan the \$15 for the cab fare?
- Yes. A
- Q And then they left, Regan and Dunlop?
- A Right.
- And then you left with Detective Richardson? Q
- Yes.
- Q What if anything did you do with the members of the bar?

1

1

4

h

4,

.4

1

RI

11

11

K

18

1

A I went over to members of the Group 5 and apprised them of the conversation, that we would have to come back the next night.

Q How, Mr. Bernhardt, I direct your attention to that following ovening, the night of January 24, 1973, at approximately 11:10 p.m. Did you return on that occasion to Wilson's bar at 177 Chrystie Street?

A Yes. Detective Richardson and myself again returned to the bar. We entered the bar, sat at the bar.

I asked the barmaid whether Andy was there. She said no but he should be in a little later. I then ordered a drink for Detective Richardson and myself and we sat at the bar to await the arrival of Andy.

About 20 or 25 minutes later Andy came in the bar. He nodded to me and then he walked into a rear room, the same rear room where he took off his coat, and came back out again.

- Q And what did he do when he came back out of the rear room of the bar to the area where you were?
- A He came over to me and I told him that I wanted the eighth of cocaine.
  - Q And by eighth you mean eighth of a kilogram?
  - A Sighth of a kilogram, right.
  - Q And then what happened?

7

10

9

11 .

13

12

14

15

16

17 18

19

20

21

22 23

24

25

A I then returned to the other end of the bar and engaged a few people in conversation and then he entered the rear room again and two fellows went in behind him.

Q And what, if anything, happened after that?

Did you see two other people in the room?

A Yes. I saw two other people enter the room with him.

Q And what if anything happened after that?

A He came back out some time later and asked me to step into the back room with him.

Q And did you go into the back room with him?

A Yes, I did. I went into a rear kitchen. This is a different room aside from the room he put his coat in. It was a rear kitchen, and him and I went into this room.

Q And what about Detective Richardson?

A No. She stayed at the bar.

Q She stayed out?

A Right.

Q And what happened when you went into the rear room with the defendant Andino?

A He removed a brown paper bag from a pan that was above the sink in the kitchen. He then removed a plastic bag from out of the brown paper bag, which contained the

3

5

6

7

8

9

11

12

13

14

15 16

17

18

19

20

21

22

23

24

25

white powder. He then emptied the white powder on a piece of cardboard.

- Q And what, if anything, happened after that?
- A I asked him how the coke was and he said it was good. I told him it didn't look that good because there wasn't any rocks in it, but he said not to worry, that it was good.
  - Q You are referring to the white powder?
  - A Yes.
  - Q What do you mean by the term -- rocks, was it?
  - A Yes, it would be like a little pebble of cocaine.
  - Q As opposed to small granules?
  - A Compared to a powder.
  - Q And what did he say about the white powder?
  - A He said it was good and that it could take the 2 cut. And I said fine. I placed it back into the clear plastic bag and put it back in the brown paper bag. I then told him that Detective Richardson had the money out at the bar, and he said fine and told him I would have to go get it from her.
    - You didn't say Detective Richardson?
    - A No.
    - Q What did you say?
    - A I said "Mickey has the money outside."

3

4 5

6

7

8

10 11

12

13

14

15 16

17

18

19

20

21

22

23

24

25

Q And then what happened?

A I then went out and told Detective Richardson to count out \$2500, at which time she went into her pocketbook and counted out some money.

Andy then came over to us and she handed him a sum of U.S. currency.

THE COURT: Read the last sentence, please.

(Answer read.)

THE COURT: All right.

Q Do you know where the \$2500 comes from?

A Yes. That was official government funds that were given to us to purchase this particular narcotics exhibit by the office.

Q These are funds appropriated to the New York Joint
Task Force for this purpose?

A Right.

Q And did you observe Detective Richardson hand the money to Andino?

A I observed Detective Richardson hand the money to Andino. I then told Andino to go in the kitchen and count the money, which he did. He went into the rear room and then came back and said everything was okay.

Q Did you go with him in the rear room?

A No, I didn't.

.3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

- Q And he came back and what did he say?
  - A He said everything was okay.
  - Q And what, if anything, happened after that?

A Approximately five or ten minutes later Detective Richardson and myself left the bar. I retained custody of the brown paper bag with the clear pastic bag with the white powder in it. I met with the members of the Group 5. We conducted a field test for cocaine, with positive results. I then transported it to the office, where I weighed, sealed and initialed it, and it was witnessed by Detective Richardson. We placed it in a lock-sealed envelope and we dropped it into the safe for delivery to the chemist.

- Q That was a mouthful.
- A Yes.
- Q Now, is this a standard procedure which you follow when you obtain narcotics as evidence?
  - A Yes, it is.
- Q Now, when you met with other members of the

  Joint Task Force, Group 5, do you recall where that meeting
  took place?
- A It was maybe a couple of blocks away from Delancey Street, if I am not mistaken, somewhere in that area.
  - Q And at that time did you discuss with them what had

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

2 transpired in the bar?

A Yes. I told him what the conversations we had, briefly, and what had happened.

Q Do you know whether or not during the time you were in the bar there were other agents outside of the bar?

A Yes, there were. They were supposed to be watching and protecting me.

MR. OZER: I object to that characterization of supposed to be watching."

THE COURT: Strike supposed to be. The question specifically was, Detective, whether there were other agents at the bar.

THE WITNESS: Yes, there were.

THE COURT: Go ahead.

Q . Was that in the bar?

A In the bar, no. There were other agents outside of the bar.

THE COURT: I beg your pardon. Go ahead.

Q During this time did you maintain custody of the brown paper bag with the clear palstic bag with the white powder?

- A Yes, I did.
- Q And you returned to your office?
- A Yes, I did.

25

1	jgbr Bernhardt-direct
2	Q And where is that located?
3	A On Varick Street.
4	Q At 201 Varick Street?
5	A At 201 Varick Street.
6	Q And at that time what did you do with the bag?
7	A I brought it upstairs, I weighed it on the scale,
8	I then conducted another preliminary test on it. I then
9	made out an evidence envelope, placed it in the envelope.
10	I initialled the bags, placed it in the envelope and then I
11	signed my name across the bag of the envelope.
12	Q What did you do with the envelope at this time?
13	A I then dropped it into the safe.
14	Q Is the envelope itself sealed?
15	A 'Yes, it is. It is locked and sealed.
16	Q And then you put it into the safe.
17	A Yes, I do.
18	Q Was Detective Richardson with you at this time?
19	A Yes, she was.
20	Q And what, if anything, did you do with this envelope
21	
22	
2	I removed it from the safe and Detective Richardson and
2	
2	5 Drugs chemist at 90 Church Street for analyzation.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

This is the regional laboratory of the chemist? Q

The regional laboratory of the federal government, right.

MR. BUCHWALD: Your Honor, at this time if we might have these items marked as Government's Exhibit 1-A and 1-B for identification respectively.

THE COURT: Yes.

(Government's Exhibits 1-A and 1-B were marked for identification.)

MR. BUCHWALD: Your Honor, might the record reflect that I am now holding what have been marked as Government's Exhibit 1-A and 1-B for identification. These are two envelopes which have been stapled together.

MR. OZER: Your Honor, if I may, I appreciate the effort to go through and cut this package open in front of the jury. We have stipulated that the drugs that were allegedly given to the chemist are these drugs and I don't think it is necessary to go through some elaborate cutting procedure as if this was some surprise. We have stipulated this is cocaine in the package. The whole issue is whether or not this cocaine came from this defendant.

THE COURT: I am going to permit the government to try its case in its own way.

MR. BUCHWALD: Thank you, your Honor.

May the record reflect that I am now removing the staple, and 1-A for identification and 1-B for identification have now been separated.

1-A for identification is an envelope which
has been opened at the top and which is empty. 1-B for
identification is presently in a locked and sealed condition.
Might the record reflect that I am now opening 1-B for
identification with a pair of scissors and removing its
contents.

And I would ask that the contents together be marked as Government's Exhibit 1 for identification.

THE COURT: Yes.

MR. OZER: Your Honor, if I may. This may be confusing. It may be confusing to me too.

I would like the jury to be aware about the Court's direction that this is the way it came from the chemist. This is not necessarily, you know, an indication that it was picked up from either of the defendants this way and then brought to the chemist.

THE COURT: That is correct, isn't it?

I mean the fact of the matter is that the testimony comes
to the fact that the detective acquired the material under
the circumstances he has testified to, that he caused it
to be delivered to the chemist, and this is the manner in

3

5

6

7

8

XX

10

12

11

13

14 15

16

17

18

19

20

21

22

23

A

25

which it was returned to him from the chemist, is that correct?

MR. BUCHWALD: That's the manner in which it was returned, in this sealed envelope which was just opened, your Honor.

THE COURT: Yes.

(Government's Exhibit 1 was marked for identification.)

## BY MR. BUCHWALD:

Q Mr. Bernhardt, I now show you Government's Exhibit

1 for identification and ask you if you can identify this

item.

A This is the brown paper bag in which Mr. Andino.

gave me the eighth of cocaine. It bears my initials,

my shield number, the date and the time.

Q And I note that you have removed from the brown paper bag itself another item. I believe that these items have been marked together as Government's Exhibit 1. Can you identify the item which you removed from the brown paper bag?

A Yes. This is the clear plastic bag. It also bears my initials, shield number, case number, date and time.

MR. BUCHWALD: Your Honor, at this time the

7

9

10

11 12

13

15

14

16

17 18

19

21

20

22

24

23

25

government offers Government's Exhibit 1, consisting both

of the brown paper bag and of the clear plastic bag contained

therein.

THE COURT: I think there is just one technical step missing.

From whom did you obtain the clear plastic bag and its contents?

THE WITNESS: I said from Mr. Andino.

THE COURT: All right. Any objection?

MR. GENOVESE: No objection.

THE COURT: I hear no objection. Received.

MR. OZER: No objection.

(Government's Exhibit 1 for identification was received in evidence.)

BY MR. BUCHWALD:

A

Q Mr. Bernhardt, I show you what has previously been marked Government's Exhibit 1-A for identification and ask you if you can identify that item.

A This is the lock sealed envelope in which I placed Government's Exhibit No. 1. It bears my signature and it is lock sealed.

Q And at the time that you delivered Government's Exhibit 1-A for identification to the chemist, what condition was it in?

3

5

6

7

٥

8

10

11

13

14

15

16 17

18

19

20

22

21

23

24

25

A It was locked and sealed. But the end wasn't cut open.

Q And thereafter did you have occasion to pick up Government's Exhibit 1-A for identification from the regional laboratory?

A Yes, I did. Around October 23rd of 1973 I

picked up -- I went to pick up Government's Exhibit 1 from
the lab.

Q That is this envelope, 1-A (indicating)?

A Yes. At the time I picked it up, there was another envelope that was stapled to it.

- Q And was the other envelope in a sealed condition?
- A Yes, it was.

legal proceedings.

And to whom did you deliver the two envelopes?

MR. OZER: Your Honor, if I may, prior to the

answer to that, may I approach the bench on that question?

THE COURT: Come up.

(At the side bar.)

MR. OZER: I just want to be careful that there is no mention of any other legal proceedings, it is just the chemist in this case and there is no question about -
MR. BUCHWALD: We did not intend to bring up the

MR. OZER: I didn't know the answer to that until

| "

1

2.

3

5

7

8

9

10

11

12

13

14

15

I objected.

THE COURT: That's all right. It would be a shame to have a mistrial for something like that. I am sure you have something like that in mind.

MR. GENOVESE: I have a problem here too.

I am not sure if this is all going to the chain of custody,
which is the only purpose I can see it going to. We
stipulated to it.

THE COURT: The fact of the matter is he has the option either to stipulate or to decline to stipulate. He has declined to stipulate.

MR. GENOVESE: He has stipulated. We went to the pains of stipulating on this.

THE COURT: If it is stipulated, why are we taking all this time to go through this performance?

MR. BUCHWALD: In view of the defense which Mr. Andino's counsel has indicated that he will raise, that this was simply a charade with a pay-off to the agents, we think that the fact that they ended up with cocaine that night and delivered it to the BNDD office negates the idea of a charade.

THE COURT: You prove your case.

(In open court.)

THE COURT: What was the last thing that was said

25

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

1	jgbr Bernhardt-direct
2	before the side bar conference, please?
3	(Question read.)
4	A I delivered them to an Assistant U.S. Attorney
5.	John Cooney in the Southern District of New York.
6	Q Is that in this courthouse?
7	A Yes, in this courthouse, right.
8	Q Now directing your attention to the evening of
9	April 17, 1973, what was your duty assignment on that night?
10	A I was still assigned to the New York Joint Task
11	Force, still working on case No. CT-72-0237.
12	THE COURT: Should I not make clear to the jury
13	that what you are offering now is offered with respect.
14	to Mr. Andino alone and not with respect to Mrs. Dunlop?
15	MR. BUCHWALD: That is correct, your Honor.
16	THE COURT: Ladies and gentlemen of the jury, what
17	you have hearduntil now is offered with respect to both
18	Mrs. Dunlop and Mr. Andino. What you are about to hear
19	now about this transaction is only offered with respect to
20	Mr. Andino and you are not to consider this particular
21	testimony with respect to Mrs. Dunlop.
22	BY MR. BUCHWALD:
23	Q What was your duty assignment on the evening

of April 17th?

25

Again I was working in an undercover capacity.

XX

.

57

10

12

13 14

15

16

17

18

19

20

21

22

24

25

Q Would you explain to the Court and to the jury
what procedures you followed in recording those telephone
conversations?

A We have a small cassette tape recorder in our office which has a jack which you can plug into it and attach a suction cup to the receiver of the telephone.

We then place a cassette tape in it and which I prefix; in other words I set the date, the time, my name, the number I was calling and the time.

I then dial the number while the machine was still recording and spoke to whoever I was speaking to on other end, and both conversations would be recorded on the tape.

Q So you state on the tape before you dial the number who you are and who you are calling and the phone number you are calling?

A Yes, I do.

Q And the time that you are placing the call?

A Yes, I do.

Now, what do you do if during the course of the telephone conversation which you are recording in this machine the tape comes to an end or the cartridge comes to an end?

A I hit the eject button, the tape pops up, ejects.

I then flip it over, put it back in, put it back on record and

continue talking.

3

•

8

10

11 12

13

15

16

17

18

19 20

21

22

23

24

25

MR. BUCHWALD: Your Honor, if we might have this

item marked as Government's Exhibit 3 for identification.

THE COURT: Yes.

(Government's Exhibit 3 was marked for identification.)

Q Mr. Bernhardt, I show you what has been marked as Government's Exhibit 3 for identification and ask you if you can identify this item.

A This is a casette tape which I recorded during the course of case No. CT-72-0237. It also bears my initials and shield number.

THE COURT: Can you tell us the date on which the conversation took place?

A On this particular tape there are several conversations on different dates during the month of January 23rd, 24th and what not.

- Q And have you heard this tape?
- A Yes, I have.
- Q Have you heard the recordings of your telephone conversations with Mr. Regan which you testified about took place on January 23, 1973?
  - A Yes, I have.
  - Q And do the recordings contained on this tape

XX

22

moments?

23

24

25

MR.BUCHWALD: I believe we could go on and complete Mr. Bernhardt's direct testimony.

THE COURT: All right.

.

.. 5

6

8

7

9

10

XX 11

12

13

••

16

15

17

18

19

20

21

22

23

24 25 MR. BUCHWALD: Your Honor, if we might at this point have these items marked respectively as Government's Exhibits 3-A and 3-B for identification.

(Government's Exhibits 3-A and 3-B were marked for identification.)

MR. BUCHWALD: I believe there is a third item, which I would ask to have marked as Government's Exhibit 3-C for identification.

(Government's Exhibit 3-C was marked for identification.)

MR. BUCHWALD: And I would ask that we have this item marked as Government's Exhibits 3-D for identification.

(Government's Exhibit 3-D was marked for identification.)

MR. BUCHWALD: Your Honor, the government offers

Government's Exhibit 3-A, 3-B, 3-C and 3-D for identification

into evidence as 3-A, 3QB, 3-C and 3-D respectively.

MR. OZER: I make the same objection, your Honor, as to the recording, as to the transcripts.

THE COURT: Are these exhibits the transcripts?

I haven't seen them yet. May I see them, please.

MR.BUCHWALD: Yes, your Honor (handing).

THE COURT: A, B and C are, yes. You don't contest, do you, 3-D?

MR. OZER: No, I don't, your Honor.

3

THE COURT: Mr. Genovese, do you wish to be

5

MR.GENOVESE: I have no objection to them, your

Honor.

heard?

7

6

THE COURT: Received.

XX

for identification were received in evidence.)

10

MR. BUCHWALD: May I read 3-D to the jury,

11

your Honor.

12

13

14

15

16

17

18

19

20

21

23

24

25

(Government's Exhibits 3-A, 3-B, 3-C and 3-D

THE COURT: Yes.

MR. BUCHWALD: It is hereby stipulated and agreed by and between the parties that Government's Exhibits 3-A through 3-C are an accurate transcription of Government's Exhibit 3.

Your Honor, with the Court's permission, we would propose at this time to hand to the several jurors the Xerox copies which have been made of Government's Exhibit 3-A, 3-B and 3-C so that they might have those transcriptions as we play Government's Exhibit 3 to the jury.

THE COURT: We will do that after recess.

Is there anything further of this witness on direct examination?

BY MR. BUCHWALD:

.

4

5

6

7

8

9

10

11

12

13

14

15

16

2 pm 17

. 18

19

20

21

22

23

24

25

Q Let me ask you, Mr. Bernhardt, did you ever place phone calls on January 23, 1973 to Mr. Regan where there was a busy signal?

A Yes, there was.

Q And are those also recorded on the January 23rd portion of the tape?

A They should be, yes.

MR. BUCHWALD: We would have no further questions.

THE COURT: Ladies and gentlemen of the jury,

we will take the afternoon recess now, which will be some

ten minutes. Please do not discuss the case among yourselves

or with anyone else. You may retire. Ten minutes.

(Jury left the courtroom.)

(Recess.)

(Jury present.)

MR. BUCHWALD: Your Honor, may I now distribute to the jury copies of Government's Exhibit 3-A, 3-B and 3-C, transcriptions of the three conversations contained on Government's Exhibit 3?

THE COURT: Yes.

MR.BUCHWALD: Your Honor, at this time I would ask at this time to be permitted to play Government's Exhibit 3 to the jury.

.

THE COURT: Ladies and gentlemen of the jury,

I am going to permit the government to play this tape recording of the conversations testified to by the detective.

You have before you what purports to be a transcript of the conversation. That is for your convenience and to be used as a guide in listening to this particular tape, but it is whatyou hear on the tape rather than what may appear on the transcription that counts.

MR. BUCHWALD: Are we ready, your Honor?

THE COURT: Yes.

(Tape played.)

MR. BUCHWALD: Let the record reflect that I am now flipping the cartridge to the opposite side of the tape. And so that the record might be clear, I have done so midway down page 3 of Government's Exhibit 3-A, and I am now continuing the tape.

(Tape played.)

MR. BUCHWALD: Your Honor, at this time shall we collect the copies of Government's Exhibits 3-A through 3-D?

THE COURT: Yes.

Would you all pass the copies down to the person at the end?

MR. BUCHWALD: Your Honor, the government has no

1	jgbr	Bernhardt-cross	48
2	further quest	ions of Detective Bernhardt.	
3	THE	COURT: Gentlemen?	
4	CROSS EXAMINA	TION	
5	BY MR OZER:		•
5	Q Off	icer, how old are you?	
7	AIW	vill be twenty-five this month.	
8	Q You	said you have been in the New York City	
9	Police Depart	ment about four years?	
10	A I w	vill be a police officer four years this	March.
11	Q And	for 3-1/2 years you have been involved	in
12	narcotics wor	·k?	
13	A Sin	ice of October of 1970.	
14	Q And	how long have you been engaged in under	cover
15	work?		
16	A 3-1	./2 years.	
17	Q Hav	e you acted as an undercover agent?	
18	A Und	dercover agent.	
19	Q How	many years have you acted as an underco	ver
20	agent?		
21	A Eve	er since I came down to the Task Force, 3	-1/2
22	years.		
23	Q In	how many cases have you been involved?	
24	A Ah	undred.	
25	Q How	many cases resulted in arrest?	

1

3

5

6

7

8

10 11

12

13

15

16

17

18 19

20

21

22

23

24

25

Mr. Andino was there, and I left.

Q Do you know if in fact any money was recovered when he was arrested?

A I really don't know. I wasn't there at the arrest.

Q If you knew that \$4,900 or approximately that much was recovered on him -- you would have heard about that, wouldn't you?

MR .BUCHWALD: Objection.

THE COURT: Sustained.

MR. OZER: I have no further questions.

THE COURT: Mr. Genovese.

CROSS EXAMINATION

BY MR. GENOVESE:

Q Detective Bernhardt, would you tell us how first met Mr. Regan, please?

A I was introduced to Mr. Regan by an informant.

Q And what was the informant's name?

A I called him Lang. That's all I know.

Q Prior to the telephone call on January 23rd, to which you testified, had you purchased cocaine through Mr. Regan before?

A Yes, I had.

Q On how many occasions?

3

5

4

6

7

8

9

10

11

12 13

14

15

16

17

18

19

20 21

22

23

24 25

On two other occasions. A

And were the circumstances essentially the same, that you would call him upand ask him if he would help you out, is that correct?

Yes, basically. A

So in each case you initiated the transaction Q through Mr. Regan, is that correct?

Yes, I did.

Did he ever call you and say, "I have got some-Q thing for you, Curley."?

I don't think he had my number. A

So you called him. 0

Yes. A

Carol?

When for the first time did you hear the name Q

On the night of the 23rd. A

Never heard it before? 0

Never did. I have heard it, but not in connection A with Mr. Regan.

And that was in the first telephone conversation at 6:45 on January 23rd?

Yes, it was.

When for the first time did you meet Carol, the defendant Mrs. Dunlop whom you have identified?

3

5

7

8

9

10

11

12 13

14

15

16

18

17

19

20

21

22 23

24

25

Later that evening, at Wilson's Bar and Grill. A

Do you recall her physical condition at that time? Q

Yes. She was pregnant. A

Did you discuss that with her? Q

Discuss her pre cy? A

Q Yes.

I might have asked how she feels or something of that nature.

Do you recall whether you did? I don't want you to Q speculate. Did you discuss it or didn't you? If you recall. If you don't recall, just say so.

I can't say offnand. I may have in general conversation.

Q But you don't recall.

I don't recall specifically.

I want you to tell me again what she did when she 0 came into the bar. You were in the bar with Detective Richardson while Mr. Regan and Mrs. Dunlop came in, is that correct?

A Yes, I was.

Now, can you tell me again what she did when she came into the bar?

Mr. Regan and Miss Dunlop came over to Detective Richardson and myself. Introductions and greetings were time?

exchanged. Everybody was relaxed. I ordered drinks.

asked the barmaid whether Andy was there.

4

3

Q Let's stop a minute.

5

Were you at a specific portion of the bar at this

6

A Yes. We were towards the uptown end of the bar.

8

7

Q Was that the bar itself rather than a table?

9

A Yes. We were at the bar itself.

10

Q At the bar itself?

11

A Yes.

12

Q And you ordered drinks, is that correct?

13

A Yes, I did.

14

Q Do you recall what it was that Mrs. Dunlop or-

15

dered?

16

A No, I don't.

17

Q Do you recall whether it was a Coke?

18

A It might have been.

19

Q But you don't recall.

20

A I don't recall. I don't remember.

21

Q Do you recall what you ordered?

22

A Yes.

23

Q What was it?

24

A I ordered a sangria.

25

Q And do you recall what Detective Richardson

1	jgbr	Bernhardt-cross 53
2	ordered?	
3	A	She might have had wine also. I am not sure.
4.	Q	At this point she asked for Mr. Andino, is that
5	correct?	
6	A	She asked for Andy, yes.
7	Q	And what was the response?
8	A	The barmaid said he wasn't in, he would be here
9	later.	
10	Q	And was she seated at this time?
11	A	Was she seated? I think, yes.
12	Q	Next to Detective Richardson, is that correct?
13	Λ	Yes, she was seated next to Detective Richardson
14	right.	
15	Q	At somepoint did she get up from that seat?
16	A	Yes, she did.
17	- ο	And when was that?
18	A	After Mr. Andino came in, had gone in the
19	back roo	m and he had come back out, when she went over
20	with Mr.	Regan to talk with Mr. Andino.
21	Q	She got up was it a stool, is that correct?
22	A	A bar stool.
23	Q	A bar stool. And went to see Mr. Andino with
24	Mr. Rega	in?
25	A	Right.

Is there anything else you said to Detective

Earlier this afternoon? No.

24

25

A

Q

3

5

6

7

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Richardson at that time?

- A General conversation. I can't recall specifically.
- Q But the two of you made the decision not to buy, is that correct?
  - A Yes, we did.
  - Q What did you do then?
  - A By then Mr. Regan had come back over to us.
  - Q Yes?
- A And he had the additional information which I wanted.
- Q And again Mrs. Dunlop was at the other end of the bar?
  - A She was still at the other end.
  - Q And what happened next, sir?
- A I then asked Mr. Regan the next question, which was, you know -- the first question was whether we could get it for 600 or 650, and, once he said no, I wanted to know when we could get the entire eighth.
  - Q And what did he tell you?
- A He then went back down to the other end of the bar.
- Q And you still remained at the other end with Detective Richardson?
  - A Right.

There might have been a time during the conversation that

Mrs.Dunlop did come back up to the bar, but I can't say

23

24

25

specifically when.

•		
	,	
4	•	

3

4

5

7

8

9

11

12

13

14

15

16

17

18

19

20

21

22

23

• 24

25

Q Can you tell the Court and jury that at no point during that evening were Mrs. Dunlop and Mrs. Richardson alone at the bar?

A No, I can't say that. There were times when they were alone, having conversations, yes.

Q I want you to think carefully, Detective Bernhardt.

Can you tell me what conversation took place in Mrs. Dunlop's presence and in your presence regarding the purchase or sale of cocaine?

A There was a time when all of us were at the end of the bar and I had introduced myself to Andy and I once again went through when he could have the entire eighth.

He said "Tomorrow night."

I asked him what the price would be. He said "\$25 or \$26 hundred."

Q And you are sure that Mrs. Dunlop was present during that time?

A I think she was, yes.

Q You think or you are sure?

A I think she was.

Q You think she was?

A As I said, there might have been a point when she walked back to sit with Detective Richardson.

Q Okay. So you think she was.

22

23

night, wouldn't you?

24

25

Yes. Someone might have had a sample or something in the bathroom.

5

6

9

10

11

. 14

15

16

17

18

19

20

- Q I would like to know. If they did, I would like to know.
  - A I would say no.
  - Q You are sure of that?
  - A Yes.
- Q Did Mrs. Dunlop have any cocaine, to your knowl-8 edge?
  - A To my knowledge, no.
    - Q And no sale was made at that time?
  - A No sale was made on the 23rd.
- 12 Q Now, there were no recording devices at all used in the bar on that evening, were there?
  - A No, there weren't.
    - Q Was there any reason for that?
  - A We have had past experience that when you are in a bar and a juke box might be playing, basically all you would get is music.
    - Q That was an informed decision that was made ahead of time, then, is that correct?
      - A Yes.
    - Q Now, you testified earlier that you and
      Detective Richardson remained in the bar and that Mrs.
      Dunlop and Mr. Regan left, is that correct?
      - A I think so, yes.

23

24

•
•

## Bernhardt-cross

## jgbr

2

Q It is or it isn't?

3

1

A We might have left first or they might have left first. But, you know --

5

Q But you testified that they left first, is that correct?

6

A I think they did. I think they did.

8

Q Now, did the Bureau of Narcotics and Dangerous
Drugs have any intelligence report on Wilson's Bar and

10

9

Grill?

11

A I wouldn't know.

12

You don't know that?

13

A I don't know.

14

Q When was it that Mr. Regan first found out that Curley was a cop?

16

15

A The night he was arrested.

17

Q That was the first occasion?

18

A I think it was, yes.

19

Q Do you know that for sure, sir?

20

A (No response.)

21

Q Let me put it this way. Have you any information

22

to the contrary?

23

A Not that I know of, no.

24

Q You don't have any.

25

A No.

8

9

10

11 12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q I just want to understand this particular transaction. On January 23rd, when was your prior conversation with Mr. Regan that led up to the call at 6:45 on January 23rd that the jury listened to?

A During the times from the previous sale until

January 23rd I would call him periodically. In other

words, I might have spoken to him earlier that afternoon

or a day before or a couple of days before.

Q You would keep in touch with him. Can you give us ar approximate time period that we are talking about?

A It would be basically a matter of every couple of days. If I called him, he would say, "Give me a call tomorrow," and I would call him tomorrow. If I called and he said give him a couple of days, I wouldgive him a couple of days.

Q Do you recall when the previous sale was that you used Mr. Regan?

A Yes. It was some time in December. It was before Christmas, I think.

Q Before Christmas?

A Yes, I think so, yes.

Q So you were keeping in touch with him periodically from the period prior to Christmas until January 23rd, then, is that correct?

•

3

•

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23 24

25

A The period prior to Christmas?

Q Yes.

A I don't know whether I called him. I was on vacation during some of the Christmas season that I didn't call him. I might have called him when I came back.

Q And what was his purpose in assisting you? Was he assisting you?

A What do you mean by "assisting"?

Q I mean, what was his function? What was he doing? Was ne working for you, Mr. Regan?

A No. His specific purpose was, he was trying to assist me; not really assist me, but he was my contact on which I would call in case I wanted some cocaine.

Q He was your contact.

A Yes.

Q And what did he get out of it?

A I wouldn't know. He might have got some of the coke. He might have got some of the money.

Q But you don't know anything about that?

A No.

Q But he was always there, ready, willing and able to help you when he could, is that correct?

A When he could, yes; when he had the proper connection, he would, yes.

6

5

7 8

9

10

11 12

13 14

15

16

17

18

19

20 21

22

23

24

25

00 And just so I understand the pattern, you would call Mr. Regan and then he would attempt to get someone else to help him; is that correct?

Yes. If he didn't have it himself, he would try A to comtact someone else

- Was Mr. Regan a dealer? 0
- A. No, he wasn't.
- 0 He wasn't.
- Æ No.
- So he was an assistant to you, then, in effect. 2
- A He was a middleman, like a jobber.
- So, in this particular transaction, as I understand it, your testimony then is that you initiated the callto Mr. Regan, is that right?
  - On which instance?
  - In this particular one. Q
  - A Yes.
  - January 23rd.
  - Yes.
- You called him. You wanted to find out if he Q could help you, right?
  - Right.
- And then you say he called Mrs. Dunlop, or he brought her in, is that correct?

What was Regan's job, do you know?

23

24

25

Q

A

Q

Yes, with Regan.

Not really.

2

6

8

9

10

11

12

13

14

15

16

17

18

19

21

22

23

24

25

- A
  - A He was a correction officer.
- 3 Q He was what?
  - A A correction officer.
  - Q Is that a city job?
  - A Yes.
  - Q Does that mean he worked in the courts?
    - A Yes. He worked in the courts and in the prisons.
      - Q A court attendant?
    - A A correction officer.
  - Q After the evening of January 23rd, when you saw Mr. Regan and Mrs. Dunlop leave the bar, did you ever see Mrs. Dunlop again?
    - A Again? No. Yes. At the time of her arrest.
  - Q And between the time of her arrest and that evening of January 23rd you never saw her, is that correct?
    - A No, I didn't.
      - Q Did you ask Mr. Regan about her?
  - A I can't say that I did, no.
- Q You didn't ask him who she was?
  - A No. He had mentioned she had lived downstairs.

    I didn't further it any. My function is to gain intelligence information and give it to fellows in my group. They check everything. They do everything. I just buy the narcotics, basically.

3

6 7

9

10 11

12

13

14

15

16

17

18

19 20

21

22 23

24

25

Can you tell me of any other connection that Q Mrs. Dunlop has had with this alleged sale other than what you have told this Court and jury?

- A None that I know of.
- Nome at all, is that correct? Q
- A None that I know of.
- Q You know nothing else.
- A I know nothing else, right.

MR.GENOVESE: No further questions.

THE COURT: I think we will reserve your redirect examination until tomorrow morning.

MR. BUCHMALD: Fine, your Honor.

.THE COURT: I am just waiting for a message about my own schedule tomorrow, which I should have in a moment here.

(Pause.)

THE COURT: All right.

We will resume at the regular time tomorrow, 10 o'clock. Please be here promptly at 10 o'clock. Do not discuss the case among yourselves or with anyone else. You are excused until tomorrow morning at 10 o'clock in this courtroom.

Go directly to the jury room.

(The jury left the courtroom.)

jgbr

conspiracy charge is the same as if it was a conspiracy charge.

THE COURT: I tell you, Mr. Ozer, I have been practiced ing law for a long, long time and I don't take general statements like that every. I rule on particular objections.

I sustain them and I overrule them. But it is for the Court himself to make pronouncements like that and not for me, and I really know my place. That's where the record stands.

(In open court; jury present.)

KENNETH BERNHARDT, resumed.

THE COURT: Ladies and gentlemen, I realize there will be from time to time some reason for lateness, but I ask you to understand that when you are late it keeps 13 other jurors, the lawyers, myself, the court personnel waiting. While I realize that sometimes that cannot be helped, I ask you all to be present promptly in the future.

All right.

MR. BUCHWALD: May I proceed, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION CONTINUED

BY MR. BUCHWALD:

Q Mr. Bernhardt, you were testifying yesterday toward the end of the day, as I recall, that Henry Lee Regan

was in some sense your contact and you referred to previous transactions. Was Henry Lee Regan your employee or was he an employee of the Joint Task Force?

A No, he wan't. He was the subject of an investigation. In other words, he was an original defendant which we were after.

Q And in your discussions with him you pretended that you were a cocaine dealer.

A Yes, I did.

Q And on certain occasions prior to January 23, 1973, in connection with transactions in which these two defendants had no part whatsoever, Regan introduced you to other individuals and you were able to buy cocaine, is that correct?

A Yes. In November and December he introduced me to two entirely different sources of supply for two entirely different purchases.

Q That was November of 1972 and December of 1972?

A Right.

Q And the first situation he testified about here was on January 23, 1973.

A Right.

THE COURT: As the United States Attorney has indicated, the events of November and December 1972 are in no way to be considered by you with respect to these defendants.

3

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

All right.

Q After the other transactions, in which these defendants had no part whatsoever, in November '72 and in December '72, was Mr. Regan arrested by the agents?

A No, he wasn't. The reason he wasn't arrested is that ---

MR.GENOVESE: Objection, your Honor.

THE COURT: Sustained.

Q And you continued to attempt to ascertain other sour of cocaine from Mr. Regan after those earlier transactions.

A Yes, I did.

Q The other people who were involved in the November 1972 and December 1972 transactions, as of January 23, 1973 had they been arrested?

A No, they had not.

MR, GENOVESE: Objection.

THE COURT: Sustained.

Q As of April 17th and April 18th, 1973, had Mr. Regan been arrested?

A No, he hadn't.

Q And is it not a fact that the agents of the
Task Force attempted to arrest all of the defendants in all
of the transactions at the same time in early May 1973?

MR GENOVESE: Objection.

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Overruled.

Yes. We tried to lock them up all on one day. A

Now, Mr. Bernhardt, in connection with the transactions about which you have testified in this trial, you testified before the federal grand jury in June of this year about Mr. Regan as well as these defendants, did you not?

Yes, I did.

And in connection with the January 23-24 incident that you referred to and your observations on January 23rd and 24th, you wrote certain reports, did you not?

Yes, I did.

And in those reports you wrote about Mr. Regan as well as these two defendants.

A Yes, I did.

Do you remember yesterday Mr. Ozer asking you about a sale is a sale and it doesn't make any difference what the quantity is?

Yes, he did. A

How long have youbeen involved in undercover work? Q

3-1/2 years.

Incidentally, when you start out on the New York Q City Police Force, do you start out as a detective?

No, you start out as a police officer.

THE COURT: As a patrolman?

THE WITNESS: They call it police officer now.

1

2

THE COURT: Do they?

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE WITNESS: Yes.

THE COURT: My information is out of date.

THE WITNESS: You start out as a police officer and with meritorious work, in quotes, you become a detective.

- Q That represents a promotion?
- A Yes, a promotion, right.
- Q And at the New York Joint Task Force, does that consist solely of New York City policemen and policewomen?

A No.

MR. OZER: I object to this line of inquiry about who is involved in the Joint Task Force. We are talking about that man only.

THE COURT: Overruled. Go ahead.

A (Continuing) No. The Joint Task Force was an agency formed in 1970 which was made up of federal narcotics agents, state troopers and investigators from the New York State Police along with the New York City Police Department, police officers and detectives all working on narcotics together.

Q You referred to certain surveillance agents in your testimony yesterday about January 23rd and January 24th

10

11

12

13

14

15

16

18

Q And you function, as Mr. Ozer asked you about yesterday, is to fool the people that you are dealing with into believing thatyou are a cocaine dealer, isn't that correct?

21 22

23

20

MR.GENOVESE: Your Honor, I object. I think that there is a certain amount of leading which I think is all right. But in this case every question is a leading question. I respectfully request the Court to instruct counsel to

25

24

9

10

11

13

14 15

16

17

18

20

21

22

23

25

ask questions that are not as leading.

THE COURT: Well, insofar as that is possible I shall do so. However, if this is an objection to a specific question, it is overruled.

MR.GENOVESE: It is an objection to this question.

THE COURT: Overruled.

Read the question, please, to the witness.

(Question read.)

A Yes. I pose as a cocaine purchaser or heroin purchaser, narcotics dealer.

Q So, if you bought a small quantity of cocaine for too high a price, would you be fooling people?

A No, I wouldn't. I have to in my own mind try
to evaluate prices and quality so that it doesn't appear that
I don't know what is going on. In other words, if I pay too
much for a particular amount of cocaine or heroin and the
purity was very low, I am the one that is the fool and
people would, you know, not think that I was a dealer of
narcotics.

MR. OZER: Your Honor, I object. This is calling for conclusions on the part of the people he is dealing with. This is pure speculation.

THE COURT: Overruled.

Q Mr. Bernhardt, you testified yesterday, did you

6

7

9

10

11

13

14

15

16

17

18

20

21

22 23

24

25.

not, I think in response to Mr. Ozer's question and perhaps Mr. Genovese's question, about not being concerned about the security of the government money that was issued to Detective Richardson and to yourself in connection with these transactions? Do you recall that testimony?

A Yes, I do.

Q Would you state to the Court and jury what you meant by the words "not concerned"?

A At this particular time I, myself, was wearing my service revolver and Detective Richardson also had her gun on her.

Q Now, do these look like police guns?

A It is a standard Police Department gun which I purchased through the Police Department, but I don't have the normal grips on it and it is changed slightly in appearance so that it doesn't look like a police officer's gun.

Q And you testified, did you not, sir, that you learned at some time that Mr. Andino owned the Wilson Bar?

A Yes, I did. We had a State Liquor Authority
Hearing upon which --

MR. OZER: Your Honor, I object to this line of inquiry.

THE COURT: Sustained.

MR. BUCHWALD: Sustained.

9

10

11 12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Do you recall, I believe it was Mr. Ozer, asking you about fingerprints, but you and the other agents had not sent the narcotics exhibits for fingerprintanalysis?

A Yes, I do.

Q Let me show you Government's Exhibit 2 again.

I would like you to look at Government's Exhibit 2.

MR. OZER: Your Honor, I object to this line of inquiry. I specifically referred first to the brown bag and Exhibit 1, if I recall.

MR. BUCHWALD: If I might withdraw that question.

Q I show you Government's Exhibit 1 and the brown bag. Would you look at Government's Exhibit 1 and the brown bag? When you first saw that exhibit, did you see it alone somewhere in the middle of an empty room?

A No. It was in the kitchen, in the pan above the kitchen sink.

Q And did you see Mr. Andino hand it to you?

A Yes, I did.

MR. BUCHWALD: I have no further questions.

THE COURT: Mr. Ozer?

RECROSS EXAMINATION

BY MR. OZER:

Q As far as the fingerprints, you didn't have any fingerprint analysis done on the bag?

1.

2

3

•

7

9

10

11

13

14

15

16

18

19

20

21

23

24

25

take place on the night of January 23-24?

A Yes, I did.

Q Do you know that there was no chance that the money would be recovered that night? Isn't that a fact?

A Yes, I did.

Q And isn't it a fact that you knew by prior plan that there would be no arrest on the night of April 18th?

Isn't that a fact?

A Yes.

Q And you knew that therefore the money would not be recovered that night, isn't that a fact?

A Yes.

MR. OZER: No further questions.

THE COURT: Mr. Genovese?

RECROSS EXAMINATION

BY MR. GENOVESE.

Q Detective Bernhardt, Mr. Regan was cooperating with you, was he not, sir?

MR.BUCHWALD: Your Honor, could we have a time frame on the question?

THE COURT: Yes. Set a time.

Q During the period November, December January of '72 and '73, was Mr. Regan cooperating with you?

A Unwittingly, yes, he was.

When was that?

25

Q

- - A Was I together helping the Assistant?
- Yes, you and Mr. Regan. Q 24

I was conferring with the Assistant U.S. Attorney 25 A

2

3

5

6

7

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

involved in the case and as I would come out maybe Mr. Regan would be coming in, or there might be a brief period when we were both together in the room.

Q Now, in October 1973, did both you and Mr. Regan testify at the trial?

A Yes, we did.

Q And that was a trial of Mr. Miller?

A Yes, it was.

Q Mr. Regan was cooperating, is that right?

A Yes, he was.

Q And do you know the disposition that was made of the charges that were filed against Mr. Miller under indictment?

A Mr. Miller?

Q No. I am sorry. Mr. Regan.

A Mr. Regan? I thin he pled guilty to one count of the indictment. I'm not --

Q Do you know how many counts he was charged in?
MR. BUCHWALD: Objection, your Honor.

THE COURT: Sustained.

A I would say maybe --

THE COURT: Sustained.

Q And after he pled guilty he cooperated, is that correct?

3

5

6

7

8

9

10

11 12

13

14

16

17

18

19

21

22

23

24

25

A I think he is, yes.

Q Now, you testified again this morning that you didn't know what Mr. Regan was getting out of helping you, is that correct?

- A No, I didn't.
- Q You don't have any idea to this day?
- A He might have been given some of the money or some of the cocaine.
  - Q Did you ever give him anything?
  - A No, I didn't.
  - Q Did he ever take anything in your presence?
  - A Yes, he did.
  - Q He did?
  - A Yes.
  - Q What did he do?
  - A There were various occasions when during the other purchases someone would empty the contents onto a record cover and Mr. Regan along with the other defendants would take some of it up and inhale it into his nostril.
  - Q I see. You didn't consider this as any form of compensation on his part, is that correct?
  - A Whatever brief compensation he got from inhaling it in his nostrils, that's his compensation.
    - Q How much would he take?

1

2

3

5

6

7

10

11

12

13

14

jqbr

Teaspoon?

No.

17

18

19

20

22

21

23

24

25

MR. GENOVESE: No, no, that wasn't it.

THE COURT: That would be a fantastic quantity.

MR. GENOVESE: That wasn't the point. He was saying he was only taking a small amount. What I was saying is that he was taking a teaspoon and retaining it, and I have testimony to that effect.

THE COURT: All right.

MR. GENOVESE: That is by Mr. Bernhardt .

1

3

4

6

7

9

8

10

11

12

1.3

15

16

17

18

19

20

21 22

23

24

25

THE COURT: Okay.

(In open court.)

BY MR. GENOVESE:

Q Detective Bernhardt, you testified in this court on October 23, 1973, did you not, sir?

A Yes, I did.

Q And in what connection, sir?

A It was a case of United States Government
v. Miller, I think it was.

Q I refer you, sir, to page 69 of the transcript in that action, particularly to lines 8 through lines 23, and ask you whether you were asked that question and you gave that answer, sir (handing).

A Yes.

MR. GENOVESE: May I read it to the jury, your Honor?

THE COURT: Yes.

MR.GENOVESE: "Q You asked him how the white powder was?

"A Yes, how it was. He told me it was righteous.

He then asked me, you know, could he take care of himself.

I told him I wasn't concerned, I was just concerned with the package that I was buying. He then returned to the kitchen and exited with a set of spoons, after which he took one of

MR. BUCHWALD: No further questions.

25

1	jgbr	Richardson-direct	84			
2		THE COURT: Is there anything else, gentlem	nen?			
3		I take it no. You may step down, sir.				
4		(Witness excused.)				
5	·	THE COURT: Call the next witness, please.				
6		MR.BUCHWALD: The government calls Detecti	ive			
7	Dorothy Richardson.					
8	DOROT	THY RICHARDSON, called as a w	vitness			
9	by t	the government, being first duly sworn, testif	fied			
10	as f	follows:				
11		THE COURT: You may inquire.				
12	DIRECT EXAMINATION					
13	BY MR. BU	JCh.JALD:				
14	Q	Miss Richardson, by whom are you employed?				
15	Α .	By the New York City Police Department.				
16	Q	And in what capacity?				
17	A	As a narcotics undercover detective.				
18	Q	How long have you been so employed?				
19	А	I have been with the New York City Police				
20	Departmen	nt almost six years.				
21	Q	Six years?				
22	A	Six years:				
23	Q	Speak up so that everyone in the courtroom of	can			

And where are you presently assigned?

hear you.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	I			
2	I			

A I am assigned to the Organized Crime Control Bureau of the New York Joint Task Force, Drug Enforcement Administration.

- Q And were you so assigned in January of 1973?
- A Yes, I was.
- Q Directing your attention to the evening of January 23rd, 1973, what was your duty assignment on that evening?

A I was assigned to the Task Force and in an undercover capacity.

- Q And in connection with your undercover assignment, aid you have occasion to go to a certain bar in New York City
  - A Yes, I did.
  - Q And what was the name of that bar?
  - A The name was Wilson's Bar.
  - Q And do you recall where that was located?
- A It is located at 177 Chrystie Street, New York City.
  - Q Did you go to the bar alone?
  - A No. I went with someone else.
  - Q And who was that?
  - A Detective Kenneth Bernhardt.
- Q At that time were you wearing any kind of uniform, police uniform?

- 2
- 3

- 7
- 8
- 9 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

- No, I wasn't. A
- Was Mr. Bernhardt wearing a uniform? Q
- No, he wasn't. A
- Did you and he enter the bar? Q
- Yes, we did. A
- And what happened after you and he entered the Q bar?
- We entered the bar, we took seats at the bar, and we ordered a drink, or he ordered a drink for himself and one for me, and about five minutes later Henry Lee Regan and the defendant Carol came into the bar.

Regan and --

- May I interject for just a second? Will you again point to the person you said is Carol?
  - The lady with the pink dress on.
- THE COURT: Let the record indicate that the witness has pointed to Mrs. Dunlop.
  - Will you proceed, please? Q
- Regan and Carol entered the bar, and Bernhardt -he came over to Detective Bernhardt and introductions were made and --
- Let me ask you this. Had you ever met Mr. Regan. Q before?
  - A Yes, I had.

19

20

21

22

23

24

25

A I beg your pardon?

3

4

5

6

7

8 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Did you just talk for a while or what happened? Q

Carol and I were engaged in a conversation, and, like I said, Detective Bernhardt and Regan were standing behind us, and they were in a conversation.

And what, if anything, happened after that?

Well, shortly thereafter a male entered the bar who I later found out to be Mr. Andino. He entered the bar and he walked to the rear of the bar and entered a rear door. Shortly thereafter he came back to the bar and he came over to Carol, said a few words, and Carol and Regan got up, left their immediate area where Carol was sitting and where Regan was standing, and the three of them went into the rear room of this bar.

- And by the three of them you are referring to --
- A Regan, Carol and Andino.
- And the first one you said joined you, who you referred to as Andino, do you see that person in the courtroom today?
  - A Yes.
  - Would you point him out, please? Q
- The gentleman with the black suit on and the glasses. A MR.BUCHWALD: May the record reflect that the witness has identified the defendant Angel Andino?

THE COURT: Yes.

6

9

10

12

13

15

16

17

18

19

20

21

22

23

24

25

Q What, if anything, happened after Carol Dunlop and Henry Lee Regan and Angel Andino went into the back room?

- A They stayed there a few minutes and --
- Q Could you see them while they were in the back?
- A No, I couldn't. The door was closed.
- Q Then what happened?

A Shortly thereafter, they returned to the immediate vicinity of the bar, at the end of the bar. They had a conversation and Regan came to where Detective Bernhardt and I were. Regan and Detective Bernhardt had a conversation.

- Q And could you hear what they were saying at this time?
  - 'A No, I couldn't.
  - Q And then what happened?

A Then Regan returned to Carol and Mr. Andino at the end of the bar. They seemed to be engaged in more conversation. Regan returned again to Detective Bernhardt and had another conversation.

Q And what, if anything, happened -- during this period of time what were you doing?

A I was sitting at the bar and I was watching Mr. Andino, Regan and Carol.

Q Then what happened?

3

5

6

7

9

10

11 12

13

14

15

16

17

18

20

21

22

23

24

25

A Regan returned to the bar, to the end of the bar with Detective Bernhardt, and the four of them seemed to be engaged in a conversation.

Q And by the four of them, who are you referring to now?

- A Detective Bernhardt, Carol, Regan and Andino.
- Q And at this time you were alone, away from them?
- A Yes.
- Q And then what happened?

A There was a conversation there. Then Carol and Regan and Detective Bernhardt returned to the area where I was. Carol took a seat and Regan and Detective Bernhardt were then engaged in a conversation.

Then Detective Bernhardt -- I heard Detective Bernhardt ask Regan how much did he pay for the cab fare down to the bar. Regan said 7.25 or 7.50, and Detective Bernhardt gave him \$15 to return.

- Q And what happened next? Where was Andino at this time?
  - A He was at the end of the bar.
- Q Now you and Bernhardt and Carol Dunlop and Regan were together and Andino was at the other side.
  - A Yes.
  - Q Let me back up just a moment. You testified about

And what happened after that? Q

22

23

24

25

After that Regan and Carol left the bar, and shortly thereafter, about five minutes later, Detective Bernhardt and

1

I left the bar.

3

Q And what did you do after you and Bernhardt left the bar?

5

λ

6

A We entered our vehicle and we were met by members of our group.

7

Q What name was Bernhardt using during this time?

8

A He was using the name of Curley.

9

Q Now, did there come a time while you were in the

10

bar, on the evening of January 23rd, in which Mr. Bernhardt

11

spoke to you out of the presence of the other individuals?

12

A Yes.

13

Q Detective Richardson, I direct your avencion

14

to the following night, January 24, 1973 at approximately

15

11:10 p.m. Did you and Detective Bernhardt again at that time

16

A Yes, we did.

17 18

Q This is Wilson's Bar at Chrystie Street?

19

A Yes.

go to the bar?

20

Q And what, if anything, happened on that occasion when you entered the bar?

21

22

23

24

25

A We entered the bar, we took seats at the bar,

Detective Bernhardt ordered drinks for himself and for me,

Detective Bernhardt asked the barmaid if Andy was in,

the barmaid said no but he should be in shortly.

About 15, 20 minutes later Mr. Andino entered the bar with two other males.

Q Let me stop you for just one second. On the preceding evening, on January 23rd, when you were first joined at the bar by Mr. Regan and Miss Dunlop, did they have any drinks?

A Yes. Detective Bernhardt ordered drinks for Regan and for Carol.

Q Okay.

Now returning to the 24th, would you proceed, after you entered the bar with Detective Bernhard?

A After --

THE COURT: Let us start after the point where you asked if Andino was there and you were told he was not there. What happened after that?

THE WITNESS: About 15 or 20 minutes later Mr.

Andino entered the bar with two other males. He went to the end of the bar into the back room again, he came out, and he had a conversation with the barmaid. He came up to Detective Bernhardt and he said that he would be with him in a minute.

Q When he first came into the bar had he said anything, do you remember?

I don't remember.

Then, a few minutes later, Mr. Andino came over to me and I again said in front of Mr. Andino and Detective Bernhardt, "What is it going to cost?"

24

25

Detective Bernhardt said \$2500. Mr. Andino agreed, shaking his head, and I handed Mr. Andino \$2500 in U.S. currency.

Q And what, if anything, happened after you handed Andino the money?

A Detective Bernhardt then told Andino to count the money and make sure, you know, everything was all right with the money.

Mr. Andino then left and went to the rear of the bar, into that room again, stayed a few minutes, two or three minutes. He came back to Detective Bernhardt and I and he said everything was okay.

- Q Then what, if anything, did you do after that?
- A After that, about ten minutes, five minutes after that, Detective Bernhardt and I left the premises of 177 Chrystie Street.
  - Q And what did you do after you left the premises?
- A We entered our vehicle and we were met by members of our field team. They were shown the exhibit and it was field tested and then we proceeded to the Task Force office for processing of the exhibit.
  - Q At 201 Varick Street?
  - A Yes.
  - Q And what happened then?

1

3

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19 20

21

22

23

24

25

A At 201 Varick Street the exhibit was again tested for a cocaine derivative, it was weighed, it was sealed, it was signed and witnessed --

Q Who witnessed it?

A I did. And it was placed in a BNDD laboratory
envelope which was -- the envelope was sealed and it was
signed and witnessed by myself. Then the envelope was placed
in the Task Force safe for safekeeping until it could be
delivered to the DEA laboratory.

Q DEA means Drug Enforcement Administration?

A Yes.

9 When you say it was signed, was that by Detective Bernhardt?

A Yes.

Q And thereafter, on January 26, did you and Detective Bernhardt deliver the envelope to the laboratory?

A Yes, we did.

Q I now show you Government's Exhibit 1 and ask you if you can identify that item?

A Yes, I can.

Q And what is that item?

A This is the exhibit that was purchased from the defendant Mr. Andino on the night of January 24.

Q And when did you first see the exhibit?

by the field team.

When it was field tested, that night, on January 24,

2

1

3

•

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR.BUCHWALD: No further questions.

THE COURT: Ladies and gentlemen of the jury,

we are going to take the morning recess now for ten minutes.

Please do not discuss the case among yourselves or with

anyone else.

I should tell you it is going to be necessary for me to stop at 4 o'clock this afternoon, so you may count on leaving here at 4 p.m.

In the meanwhile we will take a 10-minute recess now. You may retire.

(The jury left the courtroom.)

MR. GENOVESE: May we respectfully request any 3500 ma-terial now with respect to Detective Richardson?

MR.BUCHWALD: There is no 3500 material with

THE COURT: All right.

respect to this winess.

MR. BUCHWALD: I would like, if I can do it at this point, if counsel will remain with me for just a second, to read in some of the 3500 material into the record that has previously been handed over.

THE COURT: Sure. Go ahead.

MR. BUCHWALD: Might the record reflect that on

the preceding Monday --

I am concerned.

3

THE COURT: Is it necessary for me to remain?

MR. BUCHWALD: I don't believe so, your Honor.

5

THE COURT: Why don't you do it in my absence?

6

If there is any problem, let me know.

7

MR. GENOVESE: We will stipulate it, as far as

8

9

MR.OZER: I will stipulate it, too.

10

MR.BUCHWALD: Might the record reflect that on

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

this past Monday, February 11, 1974, the following 3500 materil was submitted to both counsel: With respect to Detective Lernhardt, Item 3502-A, his grand jury testimony of June 14, 1973, consisting of ten pages; item 3502-B, a BND 6 dated January 5, 1973,

consisting of two pages; Item 3502-C, a BND 6 dated

of one page.

Next it Item 3502-I, a BND 6 dated November 21, 1972 consisting of three pages; Item 3502-J, a BND 6 dated December 14, 1972 consisting of two pages; Item 3502-K, a BND 7 dated December 7, 1972 consisting of one page.

Might the record also reflect that at the same time I handed to both counsel the following 3500 material with respect to Mr. Henry Lee Regan: Item 3501-A, a personal history report consisting of two pages; Item 3501-B, a standard Assistant United States Attorney's Form 306 containing the summary of a statement made by Mr. Regan on May 3, 1973 consisting of three pages; and Item 3501-C, notes from an itnerview of Mr. Regan and dated October 19, 1973 consisting of eight pages.

(Recess.)

(Jury present.)

CROSS EXAMINATION

BY MR. OZER:

Q Detective Richardson, did you prepare any written reports or statements in this case?

A No, I didn't.

Q Do youkeep a memo book?

A No, I don't.

Q Isn't it a fact that New York City police officers have a memo book - they are supposed to keep?

. 11

B

17

8

D

4

=

A Yes.

MR. OZER: I have no further questions. CROSS EXAMINATION

BY MR. GENOVESE:

Detective Richardson, going back to the evening Q of January 23rd, you testified in response to Mr. Ozer's question that you have a recollection that Mrs. Dunlop

- 19

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

jgbr

- 20 21
- 22
- 23
- 24
- 25
- Q I want you to think carefully, Detective Richard-What is it that you remember Mrs. Dunlop saying in son. the bar that evening?
  - A To me?

O Yes.

3

A Well, she stated that I looked like Mrs. Regan -I looked similar to Mr. Regan. And then I noticed that
she was pregnant and we had a conversation about her
pregnancy, and I think she stated, she also stated, that she
had other children.

7

6

Q Is that it?

9

A Yes.

10

MR. GENOVESE: I have no further questions.

11

REDIRECT EXAMINATION

12

BY MR. BUCHWALD:

13

14

Q Miss Richardson, you stated, did you not, that you did not see Mr. Andino on January 24th hand Detective Bernhardt Government's Exhibit 1?

15

A No, I didn't.

16 17

Q Did you see him take from you the \$2500 that you gave to him?

18

A Yes, I did.

20

19

Q Would you hold Government's Exhibit 1 for a second (handing)? Would you place the plastic bag inside of the brown bag, please.

22

21

And would you now hand the exhibit to me and watch me as I take the exhibit?

23

24

Now, did you see what I just did?

25

1	jgbr				
2	considered as to both defendants.				
3	Call the next witness.				
4	MR. BUCHWALD: At this time, your Honor, the				
5	government calls Mr. Henry Lee Regan.				
6	THE COURT: I take it Mr. Regan's testimony will				
7	be offered as to both defendants, is that correct?				
8	MR. BUCHWALD: That is correct.				
9	HENRY LEE REGAN, called as a witness by				
10	the Government, being first duly sworn, testified				
11	as follows:				
12	DIRECT EXAMINATION				
13	BY MR. BUCHWALD:				
14	Q Mr. Regan, I direct your attention to January 23,				
15	1973. Where were you then residing?				
16	A 38 Marcy Place, Bronx, New York.				
17	Q Was that an apartment building?				
18	A Yes, sir, Capartment 4-C.				
19	Q You lived in Apartment 4-C?				
20	A That is right.				
21	Q Do you recall your telephone number at that time?				
22	A 681 - 5598.				
23	Q On January 23, 1973, did you know an individual				
24	by the name of Curley?				
25	A Yes, I did.				

1		104			
- 11	jgbr	Regan-direct			
2	Q	And have you since that time learned the real			
3	name o	f this individual?			
4	A	Yes, I have.			
5	Q	And what is that individual's real name?			
6	A	Kenneth Bernhardt.			
7	Q	And was there a night in January of 1973 when			
8	you me	t Curley at a certain bar?			
9	A	Yes, there was.			
10	Q	Earlier on that same night, did you have certain			
11	conversations with Curley?				
12	A	Yes, I did.			
13	0	What kind of conversations were they?			
14	А	Curley had called me and asked me if I could ge			
15	some d	rugs for him.			
16	0	This was on the telephone?			
17	А	Yes. He asked me could I get something for him			
18	0	Where were you at the time of these telephone			
19	conver	sations?			
20	. А	I was at my home.			
21		During any of the telephone conversations you			
22	had wi	th Curley on that evening, was anyone else present			
23	in you	r apartment?			

Only part of one telephone conversation.

And how many people were present in your apartment

.		Regan-direct 105	
1	jgbr		
2	during tha	t part of one telephone conversation?	
3	Α .	Just one.	
4	Q .	And do you see that person in your courtroom	
5	today?		
6	A	Yes, I do.	
7	Q	And would you point to that person, please?	
8		(Pointing)	
9	. Q .	And would you describe that person, what that per-	
10	son is wearing?		
11	A	She is wearing a gaylay and a pink outfit.	
12		THE COURT: Indicating Mrs. Dunlop. Go ahead.	
13	Q	Do you know where Mrs. Dunlop lived at that time?	
14	A .	Yes. She lived in the next building, on the ground	
15	floor apar	rtment.	
16	Q	This is on Marcy Street in the Bronx?	
17	A	Marcy Place.	
18	Q	Marcy Place in the Bronx.	
19	A	Yes.	
20	Q	After the telephone conversation with Curley,	
21	during pa	rt of which Miss Dunlop was present, did you speak	
22	with Miss	Dunlop?	
23	A	Yes, I did.	
24	Q	And what did you say to her and what did she	

say to you on this occasion?

I remember mentioning to her that I had a friend of mine who was in trouble and he needed some money and that he had money to buy some cocaine and that he called me on the phone and asked me did I know any place that I could get it, and I told him offhand that I didn't know any place to get this.

So while I was speaking on the phone, Carol had come into the apartment while I was on the phone, I had mentioned to her that a fellow was on the phone. So I had mentioned to her, I said, about the cocaine. And she said "Well, look, I am going downtown."

She said, "There is a fellow that I know down there. He knows a lot of people. Maybe he could help you get some."

Q And what, if anything, happened after that?

A Well, Curley had called me back later on, and

I told him that I might be able to do something for him,

there was some people downtown who maybe would be able to
help get some cocaine.

Q Did Carol speak with anyone else while she was in your apartment?

- A She made a telephone call.
- Q From your apartment?
- A From my apartment.

3

5

6

7

8

10

9

11 12

13

14 15

16

17

18

19

20 21

22

23

24

25

And after that telephone call, did she speak with Q you again?

A Yes. She told me, she said, "When your friend calls back, tell him to meet us downtown."

Did she give you the address downtown?

And she said it was on Chrystie Street and Rivington.

- Did she say what the place was?
- She said it was a bar.
- Did she tell you whether there were many bars Q there or what?

I think she mentioned the fact that there was only one bar there, on the corner.

- Had you ever been to that bar before?
- No, I had never been there.
- And did you pass this information along to Curley on the telephone?
  - Yes, I did.
- Do you recall how many times you spoke on the Q telephone with Curley that evening?

Approximately two or three times I had spoken A to him.

- That evening. Q
- That evening. A

Did you ask Carol to come along?

Carol and I.

A

24

25

me.

Q

A

A

A

Carol.

jgbr

2

1

3

5

6

7 8

9

10

11 12

13

14

15 16

17

· 18

19

20

21

22

23

24

25

And I stood beside Curley and this other lady.

Well, I went up to Curley and I introduced him to

Did Curley tellyou the name of the other lady? Q

I told Curley, "This is Carol."

He did mention it, but I don't remember what her A

> SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

390.

name was.

- Q Then what happened?
- A Carol went down to the other end of the bar and she was talking to a man down at that end.
  - Q Had you seen the man come into the bar?
  - A No, I hadn't.
  - Q Then what happened?
- A Then she called me down to the end of the bar and she introduced me to the gentleman down at the other end of the bar.
- Q And this gentleman down at the other end of the bar, do you see him in the courtroom today?
  - A Yes, I do.
  - Q And would you point to him, please?
- A (Pointing.)
  - Q And would you describe what he is wearing?
  - A Black suit, gray shirt.
    - THE COURT: Indicating the defendant Andino.
  - Q And then there came a time when you joined Carol Dulop and Andino at the other end of the bar?
    - A Yes.
  - MR. GENOVESE: Objection, your Honor. I suggest that counsel is again leading the witness and I ask him -THE COURT: Yes. I think as to this you may ask

Z

3

•

5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

what happened next.

Q What happened next?

THE COURT: Read the last full question and answer, please, and then you tell us what happened next, Mr. Regan.

(Record read.)

A Carol introduced me to Andino, and from there Andino said that he had some work to do, so for me to accompany him into the back room. So I went in the back room with Carol and Andino.

- Q The three of you together went into the back room.
- A Yes.
- Q What happened in the back room?

A I asked Andino at this time, I said, "There is a friend of mine sitting at the bar. He wants to get an eighth of cocaine. Could you get an eighth of cocaine?"

Mr.Andino replied no, that "I can't get an eighth of cocaine." He said, "I might be able to get you an ounce of cocaine."

- Q And then what, if anything, happened?
- A Well, then I asked him how much would it be.

  He said it would be \$700. I said, "Well, I think that is kind of high, but I will go out and ask my friend."
  - Q And then what, if anything, did you do?

 A I left out of the room and I went over to where Curley was sitting at.

Q And do you know at this time where Andino and Carol were?

A Well, at that time, when I left him in the back room and they were coming out as I was approaching Curley.

Q Did they go with you to Curley?

A No. They stood down a little ways down the bar, speaking to each other.

Q And then what happened?

A And then, as I told Curley, I said I spoke to Andino and he said that he couldn't get anything heavier than an ounce, perhaps he can get that for you, but it would cost you \$700.

And Curley said that is too much money.

So I leaned over and I told Andino, I said,
"He says it is too much money," speaking of Curley.

By this time, as I was talking to him, Curley interjected.

Q At this time, when you went back to Andino and told him Curley says that is too much money, where was Carol?

A She was standing down a, a little further down the bar.

3

4 5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q And then what happened?

A And then, as I was telling him this, Curley interjected into the conversation and he was saying something like, "That's too much money"or something to that effect. And I stepped back, because I was between the two of them, and started to let them converse.

Q Then, when Curley joined the conversation, did you see where the girl was who Curley had come with or Curley had been with?

A Yes. She was sitting with --

MR.OZER: I object to that question. It presumes the fact that he came with a girl.

THE COURT: I will permit the question as amended.

A (Continuing) She was sitting on the other side of Curley.

Q She was away from the rest of you?

A That is right.

MR.GENOVESE: Objection, your Honor. He said

"on the other side." Now he said she was away. I would

like the witness to testify what the fact was, not the

Assistant.

THE COURT: Yes. Don't lead.

A (Continuing) She was sitting on the other side

24

25

1

jgbr

A

Q

A

. A

Q

A

Q

A

Q

A

Q

A

Q

A

Q

A

was?

It was some time last year, in October, I believe.

I beg your pardon? I didn't understand.

When did you make that plea?

1

3

4 5

6

7

8

10

11 12

13

14

15

16

17 18

19

20

21

22 23

24

25

MR. GENOVESE: Your Honor, I think it should be specified as to what he pleaded guilty to.

THE COURT: I assume that the U.S. Attorney will bring that out. He is just in that area now.

MR. GENOVESE: Fine. I wasn't sure.

THE COURT: Go ahead.

- Q Have you been sentenced yet?
- A No, I have not.
- Q Youare presently awaiting sentence?
- A Yes, I am.
- Q How many counts did you plead guilty to?
- A I pleaded guilty to one count of a four-count indictment.

THE COURT: All right.

- Q Four counts in which you were named?
- A Four counts in which I was named.
- Q Prior to January 23, 1973, in transactions not involving these two defendants at all, did you introduce certain people to Curley?
  - A Yes, I did.
- Q And, to your knowledge, did those introductions -MR.OZER: Your Honor, I object to this line of
  inquiry. It seems to me that is proper cross examination.
  That should not be part of the government case.

3

4 5

6

7

9

10

11

13

14

15

16

17

19

20

21

23

24

25

THE COURT: Sustained.

Q In connection with your testimony in this trial, have any statements been made to you or promises made to you by any representative of the U.S. Attorney's office?

A Only that during the time of sentencing that it will be mentioned to the Judge that I was a cooperating witness.

Q From the time after you were arrested.

A Yes, sir.

MR. BUCHWALD: No further questions, your Honor.

CROSS EXAMINATION

BY MR. GENOVESE:

Q Mr. Regan, how long have you known the defendant Carol Dunlop?

A Up until this point?

Q Yes. How long have you known her?

A At that time I had known her a few months.

Q At that time. You are referring to when, now?

A '73.

Q January of '73?

A Right.

Q You had known her for a few months?

A Yes.

Q How did you know her? How did you come to know

her?

4

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19

20

21 22

23

24

25

A I met her through another friend of mine who she lived with at the time. She was staying in his apartment.

Q And was she a social acquaintance of yours, would you say?

A Yes, sir.

Q Would you categorize her as a friend?

A Definitely.

Q And did you see her from time to time occasionally?

A Occasionally I did. Not too often, because she couldn't walk upstairs. She was pregnant.

Q And were these only social occasions, sir?

A That is right.

Q Did she come to your apartment and listen to music, is that correct?

A Yes, sir.

Q And did you know her children?

A Yes, I did.

Q And did you take an interest in them, sir?

A Just the one that I knew.

Q And how old was he?

A Four or five hears old, something like that.

Q You didn't know her oldest son?

A Only by her mentioning him.

Q Now, can you tell the Court and jury again, please,

when for the first time on the evening of January 23rd you discussed with Mrs. Dunlop her possible assistance, as you put it in your testimony, in helping your friend Curley out?

that I was having with Curley, and Carol happened to drop by. She came upstairs -- she rang the bell. I put the phone down and I went to the door, and Carol was there at the door, and she came in and I was on the phone with Curley and I was telling him "I am sorry, I can't do anything for you. I don't know anybody" or something to that effect, sir.

I concluded my telephone conversation --

- Q You concluded it, you say?
- A Yes. With Curley.
- Q You hung up the receiver?
- A I hung up the receiver.
- Q Yes.

A And I don't know what words were used, but I mentioned to Carol that -- she apparently asked me what was wrong, was anything the matter? I said "This guy is a friend of mine. He is in trouble. He has some money, he wants some cocaine but I don't know anybody that could get him out of trouble, get him the cocaine."

1	jgbr	Regan-cross 120	
2		And then Carol said, "Well, maybe, I could help	
3	you.	know a friend who knows a lot of people. Maybe	
4	he can d	do something for you."	
5	Q	You testified to something different a few minutes	5
6	ago. I	oidn't she say she was going downtown?	
7	A	Yes, she was going downtown anyway.	
8	. Q	What did that mean to you? What did that	
9	mean, go	oing down?	
10	A	That she was going downtown to visit a friend or	
11	somethin	ng.	
12	· Q	So she was going some place for a purpose, is	
13	that con	rrect? Did you ask her why she was going?	
14	A	No, I didn't.	
15	Q	You never discussed that with her?	
16	A	I never asked her why she was going down town.	
17	Q	Youdidn't ask her?	
18	A	I don't believe so. I don't remember if I did.	
19	Q	You never discussed that with her?	
20	A	I don't remember if I did discuss why she was	
21	going do	owntown, sir.	
22	Q	Will you think about that now? Is there any-	
23	thing th	nat could refresh your recollection on that point?	
24	, а	Why she was going down? I don't remember why,	

me asking her why she was going downtown.

|

1

3

5

6

7

8

9

10

11

13

14

15

16

17

18

19

20

21

22

23

24

25

2 youhad with Curley?

- A Yes, I did.
  - Q How recently, sir?
  - A The day before yesterday.
  - Q Did they refresh your recollection to any extent?
- A I only heard part of the tape. I never heard the tape in completion.
  - Q You never did?
  - A The whole tape, no, sir.
    - Q Did you see transcripts of those tapes at all?
- 12 A No. Transcripts, no.
  - Q Let me snow you one, Mr. Regan. I am handing you now what has been marked Government's Exhibit 3-A in evidence, which is a tape of a conversation that you had with Curley as you will note, at 6:45 p.m. on January 23rd, 1973.

Just looking at the first page of that, if you will, can you tell me whether that is the transcript of the first conversation that you had with Detective Bernhardt on the evening of January 23rd or at any time on January 23rd?

(Pause.)

- A Can I read this?
- Q Yes. You can read as much as you want. I just

wanted you to read enough to be able to answer the question that I posed to you, namely whether that was the first conversation you had with him on that day.

A Well, I can't be sure if it was. I am not certain that it was the first conversation. After all, this was over a year ago and I don't remember which was the first conversation.

Q And you have no recollection of one earlier than this?

A No.

Q Namely earlier than 6:45?

A No, I don't, sir. I don't even remember that one.

Q Now, Mr. Regan, in this conversation, again referring to Government's Exhibit 3-A in evidence, you told Curley you were wrong about something, and I am referring to the paragraph in the middle of the line.

A Yes, I notice.

Q What did you say you were wrong about?

A I don't know. If you are asking me this,

I don't know. But, from reading that paragraph, it says

that I was wrong, that I had set up another move, according to this. But I don't remember saying this to him.

Q I see. That's what this says.

3 4

5

6

7

8 9

10

11 12

13

14

15

16

17

18 19

20

21

22

23

24

25

A That is right.

Now, do you have an independent recollection now of what that other move was?

A No, I don't.

Q And you said the move has got to be made a little different, didn't you?

According to that statement, yes.

Different than the usual thing. What was your Q usual thing?

Well, I don't know what the usual thing that you refer to is.

Well, it is your word, it is not mine. Q MR. BUCHWALD: Objection, your Honor.

I don't remember, sir. A

THE COURT: Just a moment, please.

Overruled. He may put that question to him.

I don't know what the usual thing is that I was referring to at that time.

You said, "I don't like it the way it is being set up, but it is the only way I can handle it for you."

What were you referring to?

I don't know, sir. I really don't. A

You have no recollection? Q

Of what that was about, no.

Q

of that.

23

24

25

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

Q Then you said, "I remember later on he called, he says much him at 10 tonight."

Who was that?

A I have no recollection of that either.

Q Youdid have a meeting that night, though, didn't you?

A No. I met nobody at 10 o'clock that night.

I don't remember --

Q You didn't have a meeting that night on January
23rd? No meeting with anybody?

A I was supposed to meet Curley that night.

Q And who did you meet that night?

A I don't remember meeting anybody that night?

Q On January 23rd you don't remember meeting

anyone?

A At 10 o'clock?

Q At any time. You don't remember any meeting on January 23rd?

A Except with Curley, and I went downtown.

Q Who else did you meet with?

A With Carol, and that's all.

Q So you did have a meeting. Did you meet with anybody else? You met with Curley, Carol, and who else?

A And the friend that was with Curley at the time

25

23

24

25

So she came in. She closed the door and I went back to the phone and resumed the conversation with Curley.

Q You didn't say anything to Carol?

A I told her come in.

1	jgbr	Regan-cross	128
2	Q	Other than to come in?	
3	A	At that particular time, no.	
4	. 0	Did you tell her about your problem at that	t
5	time?		
6	A	No, sir.	
.7		THE COURT: Mr. Genovese, pick a convenie	nt place
8	for the	luncheon recess, would you, please?	
9		MR.GENOVESE: This wouldbe all right, Ju	dge.
10		THE COURT: Is this convenient?	
11		MR GENOVESE: This will be all right.	
12		THE COURT: Fine.	
13		Ladies and gentlemen of the jury, we are g	oing
14	to reces	s for lunch now. Please be back promptly at	
15	2 o'cloc	k. We will resume promptly at 2 o'clock.	Do
16	not disc	cuss the case among yourselves or with anyone	else.
17		You may retire until 2 o'clock.	
1.8		(The jury left the courtroom.)	
19		THE COURT: You may step down.	
20		All right, gentlemen.	
21		(Luncheon recess.)	
22			

## AFTERNOON SESSION

2:00 p.m.

5

3

1

(In open court; jury present.)

6

HENRY LEE REGAN, resumed.

7

THE COURT: I want to see counsel at the side bar.

8

(At the side bar.)

9

THE COURT: Mr. Genovese, advise your client at

10

the earliest opportunity that should she delay the pro-

11

ceedings again I shall give most serious thought to

12

remanding her.

13

All right.

MR.GENOVESE: Your Honor, she was here.

15

14

THE COURT: The clerk tells me she was not here.

16

MR. GENOVESE: She was out in the hall.

17

THE CLERK: I didn't see her.

18

THE COURT: All right.

.19

(In open court.)

20

THE COURT: All right, Mr. Genovese. You may

21

proceed.

22

CROSS EXAMINATION CONTINUED

23

BY MR. GENOVESE:

24

25

Q Mr. Regan, before we broke for lunch I attracted your attention to Government's Exhibit 3-A in evidence,

1 Regan-cross jgbr which is the transcript of the telephone call at 6:45. 2 Do you recall that, sir? 3 Yes. And in particular to the statement there attributed 5 to you that you had set up a meeting for that night at 6 10 o'clock. Do you recall that, sir? 7 Yes. 8 And is it still your testimony that that meeting 9 was unrelated to anything that happened later and in particu-10 lar unrelated to Mr. Andino? 11 Yes. 12 It is still your testimony? 13 That is right. A 14 We have established that after you told Curley about 15 that 10 o'clock meeting the doorbell rang, is that correct? 16 17 Yes. And then you say the defendant Dunlop came into 18 your apartment, is that correct? 19 A Yes. 20 Can you tell us what happened next? 21 I was on the phone at that particular time when 22 the bell rang. I answered the bell and Carol was at the 23 door. I let her in. I went back to the phone and I finished 24 talking with Curley. 25

5

7

10

9

11 12

13

15

14

16

17

19

20

21

22 23

24

25

Q Did you tell Curley, "Hold on. It just so happened the bell just rang just now. The girl is here now."?

- A I don't recall saying that, sir.
- Q Did you tell him that in words or effect?
- A I don't have a remembrance of that at all.
- Q And then did you say, "Hey, Carol, Andino said meet him at 10 o'clock."? Did you say that?
  - A I don't have a remembrance of saying that.
- Q Let me show you this transcript and see if that refreshes your recollection, sir (indicating).
- A It is probably correct, on the telephone conversation, but I don't remember saying that, that's all.
- Q You did have a a meeting set up for Andino at 10 o'clock, didn't you?
- A I didn't have a meeting set up for Andino at 10 o'clock, because I never spoke to Andino.
- Q What were you talking about here, "Andino said meet him at 10 o'clock."?
  - A I don't know.
  - You have no idea whatyou were talking about?
  - A No, indeed, at that time.
- Q I see. And you never spoke to Mr. Andino, is that correct?
  - A I had never spoken to him or been in his company.

3

•

5

7

8

9

10

11 12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Have you had an opportunity to look at this transcript at any time, Mr. Regan?

A A day before yesterday, I believe I looked at that, or a transcript. I am not certain.

THE COURT: Keep your voice up, please.

A Yes.

Q You didn't see it at the luncheon break, by chance, did you?

A No, sir, I didn't.

Q Now moving on through Government's Exhibit 3-A of the transcript of your conversation on January 23rd, there is a statement again attributed to you, and I will read it and ask you if you made this statement, sir:

"REGAN: He said, 'Well, I know if you spend that kind of money, I know what you are looking for. I haven't got what you want, but I am going to get you what you want.'"

Who is "he," sir?

A I don't know who "he" is.

Q You don't? Did you say what is recorded under your name here?

A I don't say that I didn't say it, but I don't remember saying these things.

Q Then further on it says, "He said they got what they

20

21

22

23

24

25

want."

jgbr

Do you know who "they" is there?

- A No, sir.
- Q Then it says, "He owns the bar."

  Do you know who "he" is there?

A Well, I don't remember saying these things.

But if this says that that's what I said, sir, then it is what I said.

- Q But you don't remember it.
- A No, sir.
- Q Then on the last page, page 4 of Government's Exhibit 3-A in evidence, again under Regan, you, sir, it says, "Well, he said he wanted to be down there at 10 o'clock."

Can you tell me who "he" is there?

- A I could only take a guess and think that was Curley.
  - Q Curley. You are talking to Curley, aren't you?
  - A On the phone.
  - Q In this conversation?
  - A That is correct.
  - Q' And you say that is Curley, that "he"?
  - A I am not sure.
  - Q Yoù know it is not Curley when you are talking

3

5

6

7

8

9

10 11

12

13

14

15

16

17

18

19 20

21

22

23 24

25

about a he, when you are talking to Curley?

I don't know who that is that I was referring to at that time.

Q You don't know.

Then it goes on and says, and this is again attributed to you, sir, "He only knows me through her, you know." Who is "he"?

- I don't know. A
- 0 You don't know. Okay.

You had a subsequent conversation with Detective Bernhardt that evening, didn't you, Mr. Regan?

- Yes, I did. A
- Do you recall approximately when that conversation was?
  - A No. No, I don't.
- Referring to Government's Exhibit 3-B in evidence, does this refresh your recollection, sir (handing)? I note particularly the top. I am asking you for your recollection as to when the conversation was.
  - A The time, you are speaking of?
  - The time, yes, sir.
- All I know it was in the evening. I don't remember exactly what time, but it was in the evening.
  - Does the time 9:45 reflected on Government's

Exhibit 3-B in evidence refresh your recollection?

A Not exactly. I know it was the evening.

Q Okay. Do you have any independent recollection of what you said to Curley and what he said to you in the second conversation?

A Not offhand, sir. I don't have any recollection of what I said to him, because at that time, as I had testified before, I had several conversations that evening with Curley and I can't put in perspective one or the other.

Q I see. Well, did you have a conversation with Curley on that evening about how you were going to get down to Delancey Street?

A Yes, I did.

Q What did you say to him and what did he say to you?

A I said to him that the bar is on Rivington and Chrystie Street, that I don't have any transportation, can he come and pick me up. And he said that he was in Brooklyn at the time and he couldn't come way back to the Bronx.

And he said if I would take a cab down or a taxicab he would pay for it.

Q Is that all?

A That's all I can remember.

Q As of the time of that conversation did you know

FOI FY SQUARE, NEW YORK, N.Y. CO 7-4580

precisely where the bar was?

3

Yes, I did. A

You did. Are you sure of that?

5 6

If that's the last conversation. That was the last conversation I remember having with him was telling

7

him where the bar was, whenever that was.

No. I am talking now, you told us that your conversation with him was about him asking you to take

10

9

a cab down and saying he would pay for it.

11

A Right.

12

In that conversation did you know where the bar was? Did you know where you were going to take the

14

cab to?

13

I don't remember, sir. A

16

15

You don't remember.

17

MR BUCHWALD: Your Honor, the witness has already testified that he remembers conversations but not

18

19

what happened during which conversation, and given that

20

testimony I believe that line of questioning is improper.

21

THE COURT: Overruled.

22

Go ahead.

23

Did you have a third conversation with Q Detective Bernhardt on the evening of January 23rd?

24

25

I had another conversation with him. A

3

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19

20

21 22

23

24

25

And what was said in that conversation, sir?

I don't remember what was said in that particular conversation. I have had, like I stated, quite a few conversations with Curley on that particular day, and for me to pinpoint exactly what I said I couldn't do.

Now, have you given prior testimony, Mr. Regan, about the first telephone conversation you had with Curley on January 23rd, in which you testified that Miss Dunlop came into the room?

Prior testimony to this?

As to that event, sir, prior to this trial. Did you testify regarding that telephone conversation at another trial?

I don't think I did. A

You have no recollection of giving any testimony?

Not about this trial. A

Did you testify in the trial of Mr. Miller?

Yes, I did. A

Now, does that refresh your recollection as to whether you gave any testimony about the telephone call between you and Curley on January 23rd when Mrs. Dunlop came into the room?

If the question was asked of me, I probably answered it, but I don't remember specifics on that, sir.

Q I appreciate that, Mr. Regan. I am asking you what you remember, not what you speculate you might remember. What do you remember about it? Were you asked about it?

A I don't know for sure if I was asked.

Q You don't know. I show you a transcript of testimony from the trial of Mr. Miller and refer you specifically to page 49, commencing with line 9, and I askyou to read that, sir, down through line 25 and over to the next page.

## (Pause.)

Q Did you read it, sir?

A Down to here (indicating)?

Q Yes. Does that refresh your recollection as to when you testified as to a telephone call in January from Curley? And did you so testify, sir, at that trial?

A I did.

MR. GENOVESE: May I read it to the jury, your Honor, from that testimony?

THE COURT: Yes.

MR. BUCHWALD: Your Honor, I would object to the reading of the testimony unless there are questions being put to this witness.

THE COURT: Well, if he wants to. The more

jgbr

6

8

9

10

12

13

14

15

16 17

18

19

20

21

22

23

24

25

usual way of doing it is to read the question and saying were you asked this question and did you make that answer. You can do it that way.

MR GENOVESE: On each one, your Honor.

THE COURT: You can read the whole thing --

MR.BUCHWALD: I would have no objection reading.

MR. GENOVESE: It goes over to line 6.

MR. BUCHWALD: Objection withdrawn.

THE COURT: One way or another he can read it.

MR. GENOVESE: (Reading) "Q Did you then speak to Curley in the month of January?

"A Yes, I did.

"Q What happened?"

MR. BUCHWALD: Might we have stated for the record who is asking the questions?

THE COURT: Why is that important?

MR. GENOVESE: I will stipulate that the questions are asked by Mr. Winograd, who was a defense counsel in that case.

THE COURT: All right.

Start again.

MR.GENOVESE: (Reading) "Q Did you then speak to Curley in the month of January?

'A Yes, I did.

22

23

24

25

## Regan-cross

- What happened?
- He asked me if I could get him, do I know somebody -- could I get him an eighth of cocaine.
- And I told him I didn't know whether or not I could
  - That I would see what I could do.
  - What did you do?
- At that particular time, while I was speaking to him, a young lady comes into the house and I stopped the phone call to open the door for her, and she came into the room where I was and said -- and I was talking, I said, 'Excuse me a minute, I'm on the phone.' I was speaking to Curley and I was telling him at that time, I said, 'I don't know what I can do for you. I don't know anybody

"And she said to me, 'What's the matter?' I said, 'This guy wants some cocaine and I don't know anybody that can get it for him.' And she says to me, 'Well, maybe I can help.'

- Who was this young lady? "0
- Her name is Carol." "A
- Mr. Regan, was that testimoney true at the time

1	jgbr Regan-cross
2	you gave it, sir?
3	A Yes, sir. It was true to my knowledge at that
4	particular time.
5	Q And do you say it is still true today?
. 6	A Yes, sir.
7	Q Well, isn't it a fact, Mr. Regan, that at the
8	time Carol came into the room you already had a 10 o'clock
9	appointment with Mr. Andino?
10	A No, it isn't.
11	Q As this transcript reflects?
12	A No, sir. I never met Andino before. I never
13	met Mr. Andino or talked with Mr. Andino before.
14	Q You didn't have an appointment with him at
15	10 o'clock?
16	A No, sir.
17	Q And are these your words, "Andino said meet him
18	at 10 o'clock."
19	A Yes, sir, that is exactly my words according to
20	that sheet. But I don't remember making that statement.
21	Q Do you challenge the accuracy of this state-
22	ment?
23	A No, I don't. I said that I don't remember. I am
· 24	not challenging the accuracy of that report at all.
25	All I am saying is that I don't remember.

jgbr Regan-cross	
A No.	
Q You don't know that?	
A I don't know who her friend was that she was	
going to see.	
Q Mr. Regan, don't you know as a fact that she was	
going to see Mr. Andino?	
A When she told me that, no, sir.	
Q You don't know that?	
A No, sir.	
Q And didn't you ask her to come along?	
A Did I ask her to come along with me?	
Q Right, so that she could introduce you to Mr.	
Andino personally?	
A She said that she was going downtown anyway.	
She said "While I am"	
Q Any way. That is correct. And what did you s	ay
to her then?	
A She said she was going downtown anyway. I asked	
her previous to this we had talked about it, and I said	
and she said, "I am going downtown anyway. So while I am	-
going downtown, I will take you down to my friend's bar and	
introduce you to him. Maybe he can help you." That's	
all she said to me.	
Q Isn't it a fact that you asked her to introduce	
	A No.  Q You don't know that?  A I don't know who her friend was that she was going to see.  Q Mr. Regan, don't you know as a fact that she was going to see Mr. Andino?  A When she told me that, no, sir.  Q You don't know that?  A No, sir.  Q And didn't you ask her to come along?  A Did I ask her to come along with me?  Q Right, so that she could introduce you to Mr.  Andino personally?  A She said that she was going downtown aryway.  She said "While I am"  Q Any way. That is correct. And what did you set to her then?  A She said she was going downtown anyway. I asked her previous to this we had talked about it, and I said and she said, "I am going downtown anyway. So while I am going downtown, I will take you down to my friend's bar and introduce you to him. Maybe he can help you." That's all she said to me.

1

you to Mr. Andino?

3

A No, it isn't a fact, because I didn't know Mr.

Andino. I had no knowledge of Mr. Andino up until that

night that I met him.

6

5

Q Who was the "he" in the telephone conversation?
You can't explain that?

8

7

A As I stated before, I didn't know who I was speaking of at that particular time.

10

9

Q Even though you mentioned Mr. Andino's name before she comes in?

11

A That is right.

12

Q Now, you ultimately went to the bar, is that correct, Mr. Regan?

14

A Yes, sir.

15 16

Q You went there by cab?

17

A Yes, I did.

18

Q And Mrs. Dunlop went with you, is that correct?

19

A Yes, she did.

20 21 Q Now tell me in your words what happened when you went into the bar.

22

23

A When we first arrived at the bar, Curley was not there. We turned around and we came out of the bar and we went around the corner to a restaurant. In the rest-

24

25

aurant Carol made a phone call. We left the bar -- the

. || \_

\_

1

4

5

6

8

9

10

12

13

14

15

16

17

18

20

21

22

23

24

25

restaurant and returned back to the bar.

- Q And what happened next, sir?
- A When we returned to the bar, Curley was there with another lady, sitting at the bar.
  - Q And then, sir?
- A I went over to Curley and I introduced him to

  Carol, and I stayed in that vicinity, speaking with Curley,

  and Carol left and went downto the other end of the bar.
- Q Right at that point, is that correct? Where did she go to the other end of the bar?
- ' A She just walked down to the other end of the bar.
  - Q All by herself?
- A She was by herself when she walked down to the other end of thebar.
  - Q What did she do down at the other end of the bar?
- A She went down and she spoke to a person that I know now as Andino.
- Q I see. Just so I understand it and so the jury understands it, when you came back from the restaurant, you walked in the bar and you saw present in the bar the two detectives -- what you now know to be two detectives.
  - A Yes.
  - Q You joined them, you made the introduction, and

7

Mrs. Dunlop then went over to see Mr. Andino.

A Right.

- Q And Mr. Andino was in the bar when you came in, is that correct?
  - A I believe he was in that bar when I came in.
  - Q I see.
  - A I am not certain.
- Q You are not certain of that? I want you to understand --
  - A Yes, sir.
- Q I want you to be certain if you are going to testify to me, because I don't want you to guess at what happened.

Was Mr.Andino in the bar when you came in with Mrs. Dunlop?

- A The only persons I seen as I walked into the bar directly was Curley and this young lady.
  - Q Right.
- A They were sitting right by the door as I came in.

  And after the introduction, Carol went down to the other

  end of the bar. After a few minutes she called me down

  to the other end of the bar.
- Q Well, can you testify, Mr. Regan, was Mr. Andino in the bar when you came in with Mrs. Dunlop?

10

9

12

13

14

15

16 17

18

19

20

21

22

23

5

6

8

7

9

10

11 12

13

14 15

16

17

18

19

20

21

22 23

24

25

I never --

2 1.13

If you don't know, just tell me.

I never seen him come in or whatever, but I know she went down to speak to him.

At some point she went to speak to him, is that true?

- A That is right.
- Q What happened next?
- She called me down and introduced me to Andino. A
- Q What did she say? I want to know what she said.
  - She said, "Lee, this is Andy. Andy, this is Lee." A
  - And what happened next, sir?
- And he said to me, he says, "I have to go in the A back room. He said, "I am busy. Come in the back room with me."

So I went into the rear of the bar, in a small room with him.

- What happened next, sir?
- And I said to him, I said, "My friend is out there sitting by the bar. He wants an eighth of cocaine."

And Andino said, "I don't have no eighth of cocaine."

So he said, "Maybe I can get an ounce, but it will

be \$700."

3

Q And what happened next?

5

6

A I left out of there and I went to the bar and I tola Curley. I said, "Curley, he said that he doesn't have what you want, but perhaps he can get you an ounce. It will be

7

\$700."

8

Q Did you have anything to drink that night, Mr. Regan?

9

10

A At the bar? Curley had bought a drink for us at the bar, bought a drink for me at the bar.

11

Q What did you drink?

13

A I don't recall what it was that I drank.

14

Q What did Mrs. Dunlop drink?

15

A I don't recall her drinking anything. I don't recall.

16 17

Q Do you recall whether or not she had a Coke?

18

A No, sir. I don't know if she drank or what she drank.

19 20

Q Where was Mrs. Dunlop during the time that you were in the back room with Mr. Andino?

21

A She came in the back room with us.

23

22

Q What did she say?

24

A She didn't say anything.

25

Q I want you to think carefully, Mr. Regan.

Approximately how long were you in the bar that evening from the time you walked in and met Detective Bernhardt and Detective Richardson to the time that you left?

A I could only approximate less than an hour, more than a half hour.

Now, you have told me already what it is

Mrs. Dunlop had said, namely that she made an introduction,

she introduced you to Mr. Andino. I want you to think

carefully again and tell me what else you recall her saying

in the time that you were present with her in the bar, from

the time that you departed with her.

A I don't recall any too much conversation there between Carol and I at that particular time in the bar.

Mostly I spoke to Curley or to Andino and back to Curley.

Q Now, at the time you and Carol left the bar, were Detectives Bernhardt and Richardson still there?

A Yes, they were still there.

Q And did you have any conversation with Curley shortly before you left the bar?

A I asked him for -- he told me he was going to give me money for the cab.

Q And he gave you \$15.

A Yes.

Q And then you left with Mrs. Dunlop, is that cor-

•

1

cocaine?

3

5

6

7 8

9

10

11

12

13

15

16

17

18

19

20

21

22

23

24

25

A I had made arrangements for him to receive

2 ounces of cocaine, I believe it was, and as payment

for me getting the 2 ounces of cocaine he gave me the

spoon.

Q And this was in November.

A Yes, sir.

Q And then did you assist him in procuring cocaine subsequent to that time?

A Yes, sir, I did.

Q In December?

A Yes, sir.

Q And in January?

A Yes, sir. January I am not sure about because I didn't know whether or not he got it or not.

Q But you did in December.

You were one of the defendants originally indicted in this case, were you not, Mr. Regan?

A Yes, I was.

Q On how many counts were you indicted?

A Four counts, sir.

Q And on the particular count we are now trying before this court, alleging possession and distribution on behalf of Mr. Andino and Mrs. Dunlop, you were a defend-

3

1

4

5

7

8

9

10

11

12

13

14

15 16

17

18

19

20 21

22

23

24

25

ant in that count, were you not?

- Yes, sir, I was. A
- And what disposition has been made of the charges against you, sir?
  - I pleaded guilty to one count of the four counts. A
  - And what count is that? Q
  - That was the first count. A
- And in what count, if you know, was the count Q involving Mr. Andino and Mrs. Dunlop?
- I don't know exactly. I think it is the last A count.
  - Would the fourth count refresh your recollection? Q
  - The fourth count, the last count. A
  - . What happened to that count, sir? Q
  - It was thrown out or dismissed or whatever. A
  - As to you. Q
  - Yes, sir. A
- You testified this morning in response to Q direct examination, and correct me if I am wrong, sir, that in return for your testimony in this case and the Miller case, it is your understanding that the government will point this fact out, namely your cooperation, at the time of your sentence, is that so?
  - That is correct.

MR.GENOVESE: I have no further questions.

23

24

THE COURT: Ladies and gentlemen, I am going to have to hear some legal argument now. so I am going to excuse you. You may take a very early morning recess.

(The jury left the courtroom.)

THE COURT: All right.

MR. GENOVESE: Your Honor, I respectfully renew my motion now made at the side bar for a judgment of acquittal pursuant to Federal Rule 29 on the ground that the government has failed to prove a prima facie case.

Assuming the best inferences that can be drawn from the government's testimony against my client, all that the government has shown is that she introduced two people in this case. The government's own evidence shows, however, that no sale or possession of narcotics took place in her presence.

THE COURT: Just a moment. You will agree, will you not, that if she introduced two people for the purpose of facilitating a sale, then the mere fact that she was herself not in possession of the narcotics would not in itself be a sufficient justification for the granting of your motion?

MR. GENOVESE: There are two branches to my motion, if I may. As I understand the indictment, she is charged with a substantive crime.

| 35-

THE COURT: That is correct.

MR. GENOVESE: And the first branch relates to that
There is absolutely not one shred of evidence as to
possession or distribution of narcotics on her part.

THE COURT: No. But the possession would be a constructive possession, would it not?

MR. GENOVESE: Not in this case, your Honor,

I don't believe it would.

THE COURT: Perhaps not. Even if it isn't,

if in fact she aided and abetted, if in fact she aided and

abetted in the consummation of a sale by Mr. Andino to

these police officers, wouldn't that be sufficient to con
stitute a violation of the law on her part regardless of

whether the material ever came into her possession actually

or constructively?

MR. GENOVESE: Under 18 USC 2 -- I want to segregate the motion into two branches or I believe my client will be prejudiced. I don't think the jury should have submitted to it the issue of whether she possessed or distributed narcotics. I think the sole issue, as I stated in my opening, with respect to Mrs. Dunlop is on aiding and abetting, and the government, to my knowledge, has offered no proof as to possession or distribution, nor do any of the cases I have read support

. 1

the principle that she could be found guilty of that substantive crime.

As I see the evidence before the Court, the only thing that she could be found guilty of is aiding and abetting.

THE COURT: But that makes her in violation of the substantive crime, doesn't it? If she is an aider and abettor, then she is guilty of the substantive crime.

MR. GENOVESE: She is subject to the penalties for the substantive crime. I don't believe it is the same as saying she is guilty of the substantive crime.

THE COURT: Well, go ahead.

MR. GENOVESE: And I submit, my first branch of the motion, then, that that issue should not be submitted to the jury and that I get a judgment of acquittal on the fact or on the charge of distribution and possession.

Now with respect to aiding and abetting, your
Honor, I have read the cases in this Circuit, and specifically
I refer your Honor to United States v. Terrell, decided
by the Second Circuit on an opinion by Judge Oakes with
Justices Kaufman and Anderson concurring, and the cite on
that is 474 Fed. 2d 764, and I submit that in line with
U.S. v. Terrell and the cases cited in that opinion,
particularly at 875 and 876, even if Mrs. Dunlop introduced

jgbr

Mr. Bernhardt, Detective Bernhardt, and Mr. Regan to
Mr. Andino for the purpose of having a sale, having a sale
consummated, that something more must be shown.

In that particular case, United States v. Terrell, the woman there involved drove the automobile, and incidentally it was Detective Bernhardt in the back seat of the automobile consummating a transaction, and the Court there held that the driving of the vehicle, the providing of the means of transportation constituted an essential contribution to the commission of the crime. Moreover, they said that there was evidence in that case that the driver, the aider and abettor, participated in the transaction in that she may have shared in the proceeds of the transaction.

THE COURT: Well, truly that isn't a necessity, for a person to be an aider and abettor, that you must show some profit motive.

MR. GENOVESE: No, it is not.

THE COURT: Let's take the facts of this particular case. If you take as true, which you must do on this motion and for purposes of this motion, what has been tescified to so far, what have you? You have a situation in which the officer says he wants cocaine, calls Mr. Regan on the phone, Mr. Regan says, "I haven't got any and

22 23

I can't get you any. However, I got this friend here who knows somebody who has it," meaning Mrs. Dunlop.

Taking everything in its most favorable light, as you do, she then undertakes to introduce Mr. Regan to Mr. Andino for the purpose, in substance, of vouching for his friend Mr. Bernhardt, or whatever that detective's name is.

In words of one syllable, taking the testimony in its most favorable light, this transaction could not have gone down without your client performing the function she performed, because Mr. Regan apparently didn't know Mr. Andino, and without her to be the intermediary I think it is reasonable to assume that Mr. Regan, first of all, wouldn't have known, even assuming he had heard Mr. Andino's name, based on your cross examination from the first tape, but there is not the slightest reason to believe that he knew where to meet Mr. Andino, where Mr. Andino was going to be at a given time.

And taking the testimony of Mr. Regan himself, that testimony, if accepted by the jury, shows that she introduced these people for the purpose of facilitating a transaction in cocaine.

Now, if that isn't aiding and abetting, I don't know what is.

: \_24

MR. GENOVESE: But, your Honor, I can't quarrel with your Honor's characterization of the testimony as you put it. I think that's a fair summary of the government's evidence and the inferences that can be drawn from it.

I do, however, feel that if the definition, as
I read the cases in this Circuit -- and I refer again now
to Terrell, where it is held, citing Judge Learned Hand,
that in order to aid and abet another to commit a crime
it is necessary that a defendant in some way associate
himself with the venture, that he participate in it as
in something that he wishes to bring about, that he seek
by his action to make it succeed --

THE COURT: That is the standard charge on aiding and abetting.

MR. GENOVESE: I understand it is, your Honor, and it is obviously --

THE COURT: And I shall charge that.

MR. GENOVESE: And it is obviously the black

letter law. And I have found no case, your Honor, where the mere introduction, as you say, with knowledge of the purpose for the introduction, is sufficient to establish aiding and abetting, and in each case -- I recognize that you say the fact that she didn't share in the proceeds is not determinable, I agree, but in each case there was

something else, the driving of the automobile, the sharing of the proceeds, something more, and I submit that --

THE COURT: In this case, the introduction of people who didn't know one another for the express purpose of facilitating a transaction in cocaine.

I will hear the government.

MR. BUCHWALD: Your Honor, with respect to the two aspects of Mr. Genovese's motion, I would suggest --

THE COURT: By the way, I don't have any requests to charge from anybody yet, do I?

MR. BUCHWALD: I believe that you have the government's requests and one supplemental request that was handed up this morning, your Honor.

THE CLERK: I believe it is up in chambers.

THE COURT: All right. Go ahead.

MR. BUCHWALD: With respect to the two aspects of the motion, I would suggest that the present state of the law in this Circuit is that an introduction, even standing alone, where the introducer knows the purpose to be a co-caine transaction and is attempting through the introduction to facilitate the distribution of cocaine, even standing alone would be aiding and abetting.

I would suggest that the evidence here goes well beyond that, including the evidence of telephone conversations

jgbr

or at least fair inferences that could be drawn even before being seen at the bar, that Mrs. Dunlop was in touch with Mr. Andino for the purpose of facilitating that transaction.

THE COURT: Without the testimony of Mr. Regan Mr. Genovese might have had a pretty solid argument, And, frankly, before I knew that Mr. Regan was going to testify, I found myself wondering what I was going to do when he made this motion.

However, when Mr. Regan testified, it seems to me that the blanks were filled.

MR. BUCHWALD: With respect to the second aspect of the motion, while I think it would be inappropriate at this point to dismiss any theory that the government has, surely if at the end of the entire case there was no additional evidence, we would have no objection, and intend to make clear in our own summation, that we are proceeding entirely on the aiding and abetting theory.

THE COURT: I am not going to charge constructive possession as there is no evidence on which to base constructive possession here.

MR. BUCHWALD: At this time?

THE COURT: That is correct. Unless something radically changes, I am not going to charge constructive possession.

The charge will be having aided and abetted the transaction between Mr. Andino and Detective Bernhardt.

MR.BUCHWALD: Thank you.

MR. OZER: Your Honor, although I am not obviously a party to this motion, the determination of the motion may affect my client, and if I may be heard for just a brief moment --

THE COURT: Why, surely.

MR. OZER: I obviously did not brief the question.

Judge, because I didn't expect to stand on this issue.

It seems to me that there is also an intervening factor of a day. The fact remains, the introduction took place on Monday and the sale of a different amount and a different negotiated amount in one -- I understand the original offer was six or seven hundred dollars. The next day there was \$2500 transaction that was certainly in no way participated in by the defendant Mrs. Dunlop, and it seems to me that the intervening period of time might be sufficient to break the chain here.

Obviously, if Mr. Regan had been introduced to Mr. Andino, you know, allegedly, according to the government's case, and two weeks had passed by or two months, it seems to me there has to be a period of time beyond which the fact remains that mere introduction is not enough.

jgbr

It seems to me there is something more --

THE COURT: I don't have to deal with the two weeks or the two months, fortunately. All I have to deal with is the fact that the transaction did not go down on the night of the introduction but did go down on the following evening. That's the fact situation that I am presented with here, and I find that upon all the evidence, and adopting the standard that the law requires me to adopt on a motion of this kind, that I cannot say that the government has failed to prove a prima facie case against either of these defendants and the motions are denied.

We will take our morning recess.

MR. GENOVESE: May I submit our requests to charge

now?

THE COURT: Yes.

(Jury present.)

MR. OZER: Your Honor, the defense calls Angel Andino.

5

6

7

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

MR.OZER: No questions.

THE COURT: You may step down.

(Witness excused.)

MR. OZER: The defense rests, your Honor.

MR. GENOVESE: The defense rests also.

THE COURT: Anything further by the government?

MR.BUCHWALD: Your Honor, if we might take a

very, very brief recess, three minutes, just so that I can -

THE COURT: All right. I am going to ask you to step out, ladies and gentlement of the jury, for a few minutes.

(The jury left the courtroom.)

THE COURT: Yes?

MR.BUCHWALD: I really wanted to check the witness room to see who was here and that will be my determination.

THE COURT: Why don't you renew your motions now, gentlemen? I will also rule on the requests.

I do not have the government's before me, but I don't think it is necessary.

MR. GENOVESE: May I start, your Honor?
THE COURT: Yes.

MR. GENOVESE: Your Honor, I would respectfully renew my motion for judgment of acquittal, and my associate Mr. Blumkin has brought to me a case which I would like

jgbr

at 827, where the holding of the Court was -- your Honor, incidentally, I am preparing this, it is in the process of being typed, a memorandum in support of my motion.

I apologize for not having it here at this time. I didn't think the case would conclude this quickly.

May I read, your Honor?

THE COURT: Yes.

MR. GENOVESE: "The charge is that he was guilty of purchasing and selling narcotics, based on the theory that he aided and abetted or was an accessory before the fact in the commission of these acts. There was no evidence to acquit Dr. Platt. The Court dismissed the conspiracy count. There was no evidence that Dr. Platt planned with the other defendants or conspired directly or indirectly with them or had any understanding with Morai to buy or sell narcotics. There was no community or scheme between them and the other defendants. They shared in no common intent or plan, nor was there any pre-arrangement or concert of action.

"Dr. Platt was paid nothing and it is not claimed that he asked any remuneration or expected to receive anything from the claimed transactions.

"Accepting the facts as contended for by the

prosecution, which is squarely contradicted by the defendant, the only thing Dr. Platt did was to give Beach the name of Morai as a man from whom he might secure heroin to dose horses in order to stimulate them in racing. This is not the purposive association with the venture that under the evidence in this case brings Dr. Platt within the compass of the crime of selling or purchasing narcotics either as principal aider and abettor or accessory before the fact."

THE COURT: Mr. Genovese, just as you read that to me it is obvious that according to the opinion what happened in that case is Dr. Platt, whoever he is, gave somebody a name of some person whom he might obtain heroin from. It seems to me there is a substantial difference between that and the facts of this case, where this lady comes down and agrees to make an introduction, performs the act of joining Mr. Regan and travelling a substantial distance, knowing full well that her purpose is to bring together two people wno don't know one another so that the seller will accept the buyer, inwords of one syllable.

That is a lot different. At least as I see it. The Court of Appeals may agree with you should the jury convict.

MR. GENOVESE: I understand your Honor's position. I respectfully submit there must be something

jgbr

more, and on that basis I renew my motion.

THE COURT: I merely want to say, Mr. Genovese, that if you are correct, and I don't say this unpleasantly, the Court of Appeals is going to have to tell me that where the circumstances of this case exist that that doesn't rise to the level of aiding and abetting, because throughout my experience as a prosecutor, as a defendant's lawyer it would come as news to me.

Motion denied.

MR. OZER: I move for judgment of acquittal.

THE COURT: Yes. Denied.

Now, gentlemen, with respect to the requests to charge, let me take Mr. Ozer's first, I am going to charge in substance, not in the exact language, requests, 1, 2 and 4. I am going to deny No. 3.

Now, with respect to Mr. Genovese's requests,

I am going to charge in substance the last paragraph

beginning at page 1. I am going to do that in sub
stance. And I am going to charge in substance Nos. 2 and

3, and I am going to deny No. 4.

MR. BUCHWALD: Your Honor --

THE COURT: Just a moment, please.

I am going to charge aiding and abetting, which appears on page 3 of his request in substance.

KENNETH E. BERNHARDT JR. 1/23/73 6:45 P.M.

I AM ATTEMPTING TO CALL HENRY LEE REGAN AT TELEPHONE #681-5598 Re: CT-72-0237

REGAN: HELLO

BERNHARDT: YEA, WHAT'S HAPPENING "LEE".

REGAN: AINT NOTHING HAPPENING, CURLY, NOT A THING.

BERNHARDT: I THOUGHT MAYBE YOU WOULD HAVE SOME GOOD NEWS.

REGAN: NA, ALL I CAN DO IS SET UP ANOTHER THING FOR YOU IN CASE

YOU WANTED IT. THAT'S ALL.

BERNHARDT: ALRIGHT.

REGAN: I CAN SET THIS UP IT IS SUPPOSE TO BE COMPLETELY SATISFACTORY, YOU KNOW. I TOLD THE CAT TO CHECK WITH ME AFTEP 6:00. YOU KNOW, AS OF YET, HE HAS'T GOTTEN IN TOUCH WITH ME - I SET THIS UP LAST NIGHT. (NOT UNDERSTANDABLE) LET YOU GO TO YOUR OWN PACES AND DO WHAT YOU WANT TO DO - DECIDE WHAT YOU WANT TO DO. UNDERSTAND WHAT I AM SAYING?

BERNHARDT: YA, ALRIGHT SO WHAT DO YOU WANT ME TO DO? GIVE YOU A RING TOMORROW AFTERNOON OR WHAT?

REGAN: SAY WHAT - COULD YOU GIVE ME A RING LATER ON TONIGHT. MAYBE ABOUT, OHOH! OH! NO, CURLY, YOU KNOW I AM WRONG, I AM WRONG.

I DID SET UP (NOT UNDERSTANDABLE) FOR HIM TO GET IN TOUCH WITH ME AFTER 6:00 BUT I REMEMBER LATER ON HE CALL HE SAYS MEET HIM AT 10:00 TONIGHT. YOU UNDERSTAND THIS NEW MOVE HAS GOT TO BE MADE A LITTLE DIFFERENT THEN OUR USUAL THING. I DON'T LIKE IT THE WAY IT'S BEING SET UP BUT IT'S THE ONLY WAY I CAN HANDLE IT FOR YOU, YOU KNOW.

BERNHARDT: WELL AH HOW DIFFERENT IS IT, YOU KNOW.

(DOORBELL)

(ANOTHER VOICE)

REGAN: HELLO

BERNHARDT: PAUSE

REGAN: AH BECAUSE THE POINT IS THAT SOMETHING I HAVE TO GO GET.

YOU KNOW, THAT TYPE OF THING. I HAVE TO GO DOWN, BE ON THE SCENE AND SHIT LIKE THAT AND OTHER THINGS, YOU KNOW, BUT I AM SPOILED.

BERNHARDT: PAUSE

REGAN: I'M USED TO PEOPLE COMING RIGHT HERE TO THE HOUSE.

BERNHARDT: WELL, IF WANT, YOU KNOW, WHAT YOU THINK, DO YOU THINK . .

YOUR OTHER MAN MIGHT BE (PAUSE)

REGAN: WELL I DON'T KNOW. EVERYDAY YOU KNOW, LITTLE BIT A DRIBBLE,

LITTLE BIT A DRIBBLE, SO, AT LEAST ITS DRIBBLING.

BERNHARDT: PAUSE

K. ...

REGAN: YOU KNOW WHAT I AM SAYING SO I DON'T. I COULD'T TELL YOU

EXACTLY WHEN, YOU KNOW.

BERNHARDT: PAUSE

REGAN: I DON'T KNOW. IT'S A FACT CURLY. YOU KNOW.

BERNHARDT: ALRIGHT SO WHAT DO YOU WANT ME TO DO THEN.

REGAN: HOLD ON, IT JUST SO HAPPENED THE BELL JUST RING JUST NOW THE

GIRL IS UP HERE NOW.

BERNHARDT: ALRIGHT

REGAN: HEY, CARROL, ANDINO SAID MEET HIM AT 10:00?

(ANOTHER VOICE)

LONG PAUSE

REGAN: SAY WHO IS DOWN THERE?

REGAN: DO YOU HAVE ACCESS TO A CAR - HE HAS HIS CAR

BERNHARDT: PAUSE

REGAN: AH

REGAN: WELL I CAN SET IT UP LIKE THAT FOR YOU

BERNHARDT: AH

REGAN: SO YOU COME UP HERE

BERNHARDT: AH AH

REGAN: BUT YOU - HOLD ON NOW

(PAUSE)

REGAN: WAY DOWNTOWN ON DELANCY STREET, MAN

BERNHARDT: AH

REGAN: DELANCY STREET

BERNHARDT: WELL YOU KNOW (PAUSE)

REGAN: IF YOU GOING TO DO THAT CAUSE KNOWING WHERE WE ARE COMING FROM.

BERNHARDT: PAUSE

REGAN: UNDERSTAND, I HAD HER EXPLAIN TO HIM WHAT WE ARE.

BERNHARDT: PAUSE

REGAN: WE ARE NOT OUT SIDE IN THE STREET UNDERSTAND.

BERNHARDT: PAUSE

REGAN: GOING FROM BAR TO BAR. AND THE TYPE OF DOE THAT WE SPEND.

BERNHARDT: PAUSE

REGAN: HE SAID WELL I KNOW IF YOU SPEND THAT KIND OF MONEY I KNOW

WHAT YOU ARE LOOKING FOR. I HAVEN'T GOT WHAT YOU WANT BUT

I AM GOING TO GET WHAT YOU WANT.

BERNHARDT: PAUSE

REGAN: SO WHEN SHE CALLED HIM LAST NIGHT, HE SAID I GOT WHAT THEY WANT.

YOU KNOW, SO WE HAD TO GO DOWN DELANCEY STREET. HE WORKS IN, WHAT IS HE THE MANAGER? THE MANAGER OF THE BAR OR SOMETHING

DOWN THERE? ----OH HE OWNS THE BAR.

REGAN: HE OWNS THE BAR.

BERNHARDT: HA HA

REGAN: O WOW, WOW, SO HE'S THE BAR OWNER - SO THIS IS WHERE HE'S

AT. SO YOU WILL HAVE TO GO TO HIS ESTABLISHMENT.

BERNHARDT: ALRIGHT SO AH GIVE YOU A CALL AROUND 10:00 OR WHAT?

REGAN: YA WELL (NOT UNDERSTANDABLE) SAID HE WANTED TO BE DOWN THERE AT 10:00.

BERNHARDT: ALRIGHT, WHERE IS IT AT?

REGAN: BUT YOU WILL HAVE TO COME UP HERE AND PICK ME UP.

BERNHARDT: PAUSE

REGAN: YOU UNDERSTAND WHAT I AM SAYING

BERNHARDT: PAUSE

REGAN: YOU HAVE TO PICK ME AND THE GIRL UP CAUSE SHE HAS TO GO DOWN AND MAKE THE ARRANGEMENTS BECAUSE HE DOES'NT KNOW ME.

BERNHARDT: RIGHT.

REGAN: HE ONLY KNOWS ME THROUGH HER, YOU KNOW.

BERNHARDT: ALRIGHT THEN (PAUSE)

REGAN: SO IF YOU WANT TO COME PICK ME UP HERE ABOUT 9:30 (PAUSE)

BERNHARDT: LET ME GIVE YOU A CALL BACK CAUSE I GOT TO PHONE NOW SEE IF I CAN GET HIS CAR.

REGAN: OK

BERNHARDT: YOU KNOW WHAT I MEAN

REGAN: ALRIGHT

BERNHARDT: ALRIGHT - OK THEN

KENNETH E. BERNHARDT JR. 1/23/73 9:45 P.M.

I AM ABOUT TO CALL HENRY LEE REGAN AT TELEPHONE #681-5598 RE: CT-72-0237

REGAN: HELLO

BERNHARDT: YA "LEE" I HAVE BEEN TRYING TO GET YOU. YOUR NUMBER HAS BEEN BUSY FOR THE PAST 20 MINUTES.

REGAN: OH YA, OK I WAS WONDERING WHAT IN THE HELL HAPPEN TO YOU.

BERNHARDT: DIG THIS MAN (PAUSE) YOU TAKE A CAB DOWN YOU KNOW I AM STILL IN BROOKLYN. I JUST GOT TO SHOOT OVER THE BRIDGE, YOU KNOW.

REGAN: OH! YOU'RE IN BROOKLYN

BERNHARDT: PAUSE

REGAN: I CAN'T TAKE NO CAB DOWN TO DELANCEY STREET

BERNHARDT: I'LL PAY FOR IT

PAUSE

BERNHARDT: I'll PAY FOR IT.

REGAN: OH! I SEE WHAT YOU ARE SAYING.

REGAN: ALRIGHT, NOW HERE IS WHAT I'LL DO.

BERNHARDT: I'LL PAY FOR IT'S NO PROBLEM, I'LL PAY FOR IT.

REGAN: OK, NOW ALRIGHT I'LL HAVE TO GO DOWN STAIRS SO I CAN TELL YOU EXACTLY WHERE TO MEET US.

BERNHARDT: PAUSE

REGAN: BECAUSE I DON'T KNOW WHERE THE BAR IS.

REGAN: YOU KNOW SO I HAVE TO GO DOWN STAIRS AND TALK TO CARROL, SO I CAN FIND OUT WHERE THE BAR IS.

BERNHARDT: ALRIGHT I'LL CALL YOU BACK THEN.

REGAN: ALRIGHT, YOU'LL CALL BACK WHAT TIME?

BERNHARDT: ABOUT 10:30

REGAN: ABOUT 10:30 - GEE MY HEAD IS NOT ALL THERE ABOUT 10:10

BERNHARDT: PAUSE

REGAN: THAT'S 20 MINUTES

BERNHARDT: (PAUSE) YOU GO BE LONG

REGAN: NO, NOT REALLY, WELL 10:00, TEN MINUTES.

BERNHARDT: ALRIGHT, ALRIGHT.

REGAN: I AM JUST GOING TO RUN DOWN THERE, ASK HER WHERE IT IS, AND

COME BACK.

BERNHARDT: OK THEN.

REGAN: IN CASE YOU RING BACK AND I AIN'T HERE IN TEN MINUTES

I AM DOWN THERE. ALRIGHT.

BERNHARDT: ALRIGHT, I WILL PAY FOR THE CAB.

REGAN: RIGHT

BERNHARDT: NO PROBLEM

REGAN: OK

KENNETH E. BERNHARDT JR. 1/23/73 10:10 P.M.

I AM ABOUT TO CALL HENRY LEE REGAN AT TELEPHONE #681-5598 RE: CT-72-0237

REGAN: HELLO.

BERNHARDT: YEA, "LEE" IT'S CURLY.

REGAN: ALRIGHT, 177 CHRISTY STREET.

BERNHARDT: 177 CHRISTY.

REGAN: ON THE CORNER OF RIVINGTON AVENUE. YEAH, UH, ON THE CORNER

OF RIVINGTON STREET.

BERNHARDT: ARE YOU SURE OF STREETS. I AM NOT FAMILAR WITH THE

STREETS THERE. I GUESS YOU ARE NOT EITHER.

REGAN: NO, THIS IS WHERE THE PLACE IS.

BERNHARDT: 177 CHRISTY

REGAN: YEAH, AT THE BAR.

BERNHARDT: ALRIGHT - WHAT TIME?

REGAN: WELL I AM GOING TO BE LEAVING. I WAS WAITING FOR YOU.

BERNHARDT: ALRIGHT.

REGAN: AS SOON AS I HANG UP. I AM GOING TO PUT ON MY COAT AND BE

LEAVING.

BERNHARDT: I'LL PAY FOR THE CAB. MAN

REGAN: ALRIGHT.

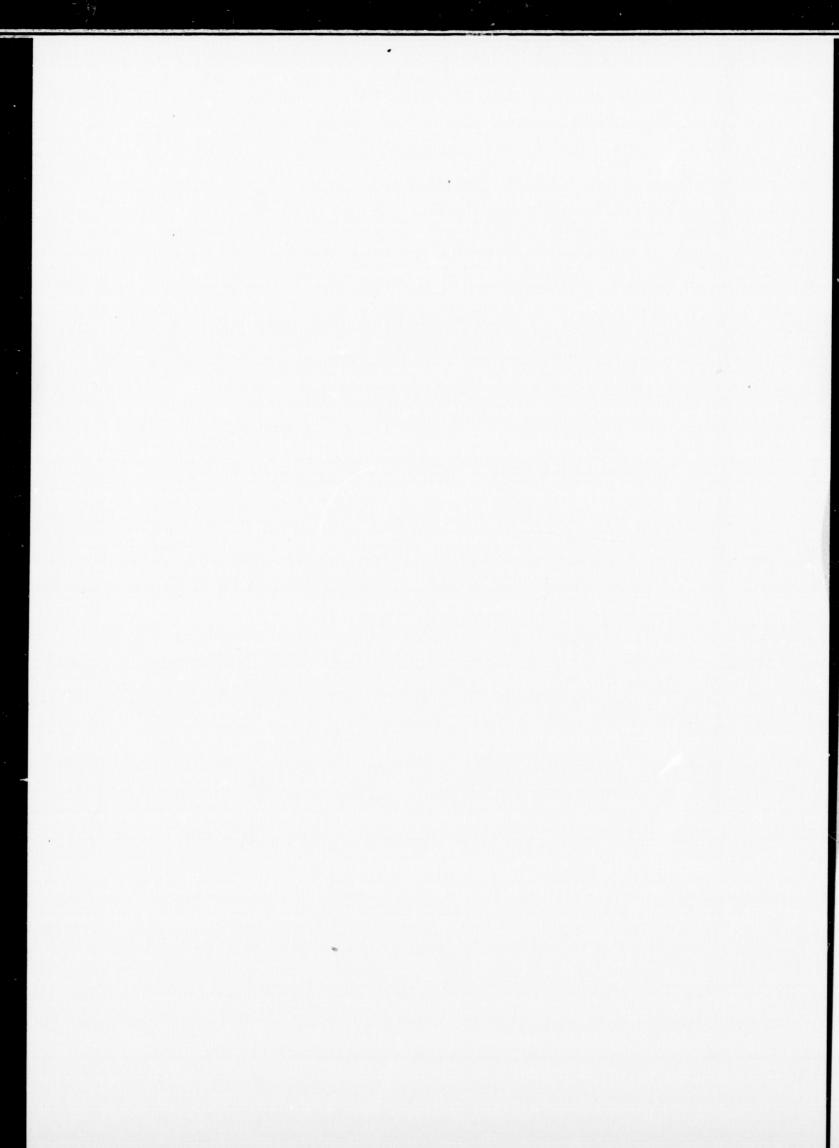
BERNHARDT: JUST THAT I AM TRYING TO SAVE TIME, YOU KNOW.

REGAN: YA.

BERNHARDT: AND RATHER THAN GO ALL THE WAY UP THERE AND YOU KNOW.

REGAN: WELL I CAN DIG THAT. I DON'T KNOW YOU WERE SO FAR AWAY.

BERNHARDT: YA



REGAN: I FIGURED YOU WERE CLOSER, YOU KNOW. SO YOU GOT THAT NOW.

BERNHARDT: YA

REGAN: RIGHT ON THE CORNER, RIVINGTON & CHRISTY, ITS THE ONLY BAR THERE.

BERNHARDT: OK THEN

REGAN: THAT'S WHAT SHE TELLS ME. SO I'LL MEET YOU THERE.

BERNHARDT: ALRIGHT

REGAN: ALRIGHT

BERNHARDT: OK

REGAN: RIGHT